No. 12321

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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OSCAR SCHATTE, *et al.*,

*Appellants,*

*vs.*

THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA; RICHARD F. WALSH; ROY M. BREWER; LOEW'S, INCORPORATED, *et al.* (Paramount Pictures, Inc., Warner Brothers Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Twentieth Century-Fox Film Corporation, R. K. O. Radio Pictures, Inc., Universal Pictures Company, Inc., and Association of Motion Picture Producers, Inc.)

*Appellees.*

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## OPENING BRIEF OF APPELLANTS.

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## OPENING BRIEF OF APPELLANTS.

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### Introduction.

This appeal, and appeals Nos. 12345 and 12346, from orders of dismissal (Appendix "A," "B"), relate to the same general subject matter. 84 F. Supp. Adv. 669.

In this case certain employees sue as individuals for themselves, and their class, without diversity of citizenship, but within the jurisdiction provided by the Constitution and certain designated laws of the United States.

In Studio Carpenters Local Union No. 946 v. Loew's, Inc., *et al.,* No. 12345, plaintiffs' union, representing its members, sues the same defendants, also without diversity, but within said jurisdiction. 84 F. Supp. Adv. 675.

In Andrew MacKay v. Loew's, Inc., No. 12346, and the several cases consolidated therewith on appeal, individual employees, belonging to said class and union, sue their respective individual employers with jurisdiction based upon diversity. 84 F. Supp. 676.

*Up to 2,000 individual suits could be brought with diversity of citizenship. But why so burden the Courts?*

It is unfortunate that this aggrieved class, and its individuals, have had to file and appeal ten cases, where, it is submitted, the district court has jurisdiction in all, and where, it is further submitted, it would be in the public interest to try all cases in a single proceeding.

At the appropriate time, if the several jurisdictions are upheld upon these related appeals, plaintiffs will ask the guidance of this Honorable Court upon the consolidation of the cases, in which jurisdiction is found to exist, to permit an expeditious trial of all said actions in a single proceeding.

Reference is made to the Union's motion to intervene in this case, and to the minute order showing the contemplation that the cases would be consolidated. [R. pp. 2, 7.]

## Statutory Provisions Sustaining Jurisdictions.

**The jurisdiction of the District Court** is sustained by:

The Fifth and Fourteenth Amendments to the Constitution of the United States;

28 U. S. Code, Sections 1331, 1337 and 1343; and the following particular statutes:

National Labor Relations Act, hereafter called NLRA;

Labor Management Relations Act of 1947, hereafter called LMRA, particularly Sections 7, 301 and 303 (29 U. S. C. A. Supp. 157, 185 and 187);

Social Security Act, Sections 301, 302 and 303, as amended (42 U. S. C. A. 501, 502 and 503, as amended);

Civil Rights Act of April 20, 1871; R. S. 1979 and 1980(3) (8 U. S. C. A. 43 and 47(3));

Sherman Act, Section 1, as amended; 26 Stat. 209; 50 Stat. 693; (15 U. S. C.); and

Clayton Act, Section 4; 38 Stat. 731 (15 U. S. C. 15);

California Unemployment Insurance Act, General Laws of California, Act No. 8780(d), as amended, particularly Sections 56(a), 70, and related sections and Regulations, in their relation to said Federal Social Security Act.

**The jurisdiction of this Honorable Court** to review the judgment of dismissal of the District Court is sustained by 28 U. S. Code, Section 1291.

## Allegations Showing Jurisdiction.

The second amended and supplemental complaint contains four causes of action, with jurisdictional allegations in the first paragraph of each. [R. pp. 8, 26, 30, 33.]

**The first count** of the complaint alleges all of the essential jurisdictional facts under 28 U. S. Code 1331 and 1337, and under Section 301 of the Labor Management Relations Act:

That the defendant companies are engaged in interstate commerce. [Par. III; R. p. 9.]

That plaintiffs, and the class for whom they sue, as members of Local 946, United Brotherhood of Carpenters, were working under collectively bargained contracts including Exhibit "A" with defendant IATSE [Par. VII; R. p. 11], Exhibits "B-1" to "B-8," inclusive, with both the IATSE and the employer defendants [Pars. IX-XVI; R. pp. 12-14], and Exhibit "B-9," as an "Interim Agreement" with the employer defendants. [Par. XVII; R. p. 14.]

That on September 23, 1946, while plaintiffs, and their class, were working thereunder, the conspiring defendants violated said contracts, by a mass lockout in which plaintiffs, and all of their class, were deprived of their work tasks, and replaced therein by the IATSE, in violation of the contracts [Pars. XIX-XXXVII; R. pp. 15-24]; that said violations have continued ever since [Par. XXXV; R. p. 23]; to their damage in sums in excess of $3,000 each, exclusive of interest and costs, and in amounts that

will require an equitable accounting. [Pars. I, XXXVIII, XXXIX; R. pp. 8, 24, 25.]

**The second count** adopts paragraphs II to XXXVIII of the first count, and alleges all the essential jurisdictional facts under 28 U. S. Code 1331 and 1337, and Section 303 of the LMRA [R. pp. 26-30], particularly alleging:

That plaintiffs, and said class, were so deprived of their work tasks by the defendant employers under threats from the defendant IATSE, in the terms of said Section 303(a)(4) of the LMRA [Pars. III-IV; R. pp. 26-27];

*That defendants have continued, and still continue, said unlawful boycott.* [Pars. V-VI; R. p. 27.]

*That the charges of unfair labor practices were referred to an IATSE member as Field Examiner and suppressed.* [Pars. VII-IX; R. pp. 27-29.]

To the damage of plaintiffs, and said class, as previously alleged. [Pars. X-XI; R. pp. 29-30.]

**The third count** adopts said paragraphs II to XXXVIII of the first count, and alleges all the essential jurisdictional facts under 28 U. S. Code 1343, and R. S. 1979, 1980 1779, 1780 (8 U. S. C. 43, 47); Federal Social Security Act, Section 303 (42 U. S. C. 503); California Employment Act, Section 70 (Cal. Gen. Laws, Act 8780(d)), Section 70, and Regulations, Art. 31, Sections 310 and 315. [R. pp. 30-32.]

In denying plaintiffs, and their class, their civil right to bargain under Section 7 of the NLRA, as re-enacted in Section 7 of the LMRA [Pars. III-V; R. pp. 30-31];

In causing the NLRB to deny plaintiffs, and their class, full, fair, open and impartial hearings upon unfair labor practice charges filed by members of the class [Par. VI; R. p. 31];

In causing said California Department of Employment and its Boards and Officers to deny plaintiffs, and their class, full, fair, open and impartial hearings upon their claims for unemployment and disability insurance benefits [Par. VII; R. p. 32];

To their damage as aforesaid.

**The fourth count** adopts said paragraphs II to XXXVIII of the first count, and makes additional allegations of violations of the Sherman and Clayton Acts [R. pp. 33-35]; to the damage of plaintiffs, and the members of their class, as aforesaid.

## ABSTRACT AND STATEMENT OF THE CASE.

The following abstract of the complaint and statement of the case, it is respectfully submitted, is as concise and succinct as the questions involved permit. It will be referred to, without unnecessary repetition, in argument.

### First Count.

In addition to the allegations of jurisdiction, the identity of the parties, and the class for whom plaintiffs sue, the first count particularly alleges the facts essential to jurisdiction under Section 301 of the LMRA, and under 28 U. S. Code, Sections 1331 and 1337, as follows:

**That the defendant motion picture companies, plaintiffs' employers, are engaged in interstate commerce.** [R. p. 9.]

**The collectively bargained contracts** are alleged as follows:

The Exhibit "A" jurisdictional agreement of July 9, 1921, between plaintiffs' United Brotherhood of Carpenters and the IATSE, settling the jurisdictional division of work between the two crafts [R. pp. 11, 36], *with the allegation that this contract has never been terminated.* [R. p. 12.] There was, therefore, no basis for the pretense of a jurisdictional dispute.

The Exhibit "B-1" basic agreement of November 29, 1926, between the employer defendants and both plaintiffs' Brotherhood of Carpenters and said IATSE, while the Exhibit "A" jurisdictional agreement was in operation, and the Exhibits "B-2" to "B-8" extensions, re-

newals and enlargements thereon [R. pp. 12-14, 41-54], *including the Exhibit "B-6" closed shop agreement* [R. pp. 13, 52], *also made while said Exhibit "A" jurisdictional agreement was in operation,* and the agreements on mechanics wage scale and working conditions referred to in said Exhibit "B-8", which provided for a six hour day, with time and one-half for overtime [R. pp. 14, 54], and the *extension of said Exhibits "B-1" to "B-7", inclusive, to October 13, 1946,* by said Exhibit "B-8". [R. pp. 14, 54.] Said Exhibit "A" jurisdictional agreement thereby, in effect, became a working part of the collectively bargained agreements between the defendant Motion Picture Companies and both the Brotherhood of Carpenters and the defendant IATSE. There was, therefore, no basis for the pretense of a jurisdictional dispute between any of the parties.

The Exhibit "B-9" "Interim" agreement of July 2, 1946, between plaintiffs' Local 946 and said employer defendants, including provisions for a *two year period, and pending the signing of formal contracts, that is, pending the negotiation of formal contracts,* and likewise containing provision for a six hour day. [R. pp. 14, 55-60.]

**That plaintiffs, and their class, worked under said contracts** [R. p. 15] until they were removed from their work tasks by the defendant employers, and replaced with the IATSE, in the mass lockout of September 23, 1946 [R. pp. 22-24.] Plaintiffs, and said class, therefore, became parties to all of said contracts, entitled to all rights thereunder.

**The violation of all of said collectively bargained contracts,** by all defendants, in said mass lockout and replacement is alleged, as follows:

In the conspiracy of April, 1945, to replace the carpenters with the IATSE, in violation of all of said collectively bargained contracts, between the Brotherhood of Carpenters and the IATSE [Exhibit "A"; R. p. 36], and between the employer defendants and both the Brotherhood of Carpenters and the IATSE [Exhibits "B-1" to "B-8", incl.; R. pp. 41-54], as alleged in paragraphs XIX-XXI [R. pp. 15-17].

The Exhibit "C-1" letter from defendant Walsh, as president of defendant IATSE, of April 14, 1945, addressed "To all former studio employees," proclaimed the agreement between the IATSE and defendant Producers Association to replace all carpenter employees with the IATSE [Par. XX; R. pp. 16, 61], as follows:

> "First of all, I want you to know that the International Alliance has reached an agreement with the Producers Association by which the I.A.T.S.E. will supply all labor to the studios, * * *" [R. p. 61.]

And admitted, as alleged in paragraph XXI [R. p. 16], that the IATSE had organized its carpenters' union to place IATSE men in the work tasks belonging to plaintiffs, and their class, as members of Carpenters Local 946, under said contracts, as follows:

> "On Tuesday night of this week a Carpenter's Local was chartered and is now known as Local No. 787 of the I.A.T.S.E. * * * there will be a local charter for Machinists, and if necessary for other crafts. *We are proceeding in accordance with our agreement with the Producers to man the studios.*" [Italics ours; R. p. 63.]

The AFL thereafter declared said IATSE "Carpenters Local 787" illegal and caused the IATSE to withdraw its charter. [Par. XXI; R. pp. 16-17.]

**Fraud Practiced by IATSE Causing Ambiguous and Void Award.**

In the fraud practiced by defendants IATSE and Walsh upon the AFL Executive Council Committee, by means of the false and fraudulent testimony of defendant Walsh [Exhibit "C-2"; R. p. 65], which was kept secret from plaintiffs, and their class, and which caused said AFL Committee to render its ambiguous award [Exhibit "C-3"; R. p. 73], with void provisions having the effect of taking certain carpenters' work tasks from plaintiffs, and their class, and giving it to said IATSE, in violation of said Exhibit "A" and Exhibits "B-1" to "B-8" collectively bargained agreements, as alleged in paragraphs XXII to XXIX. [R. pp. 17-20.] *Said AFL Committee thereafter corrected said ambiguity, and rectified said award, by the issuance of its Exhibit "C-4" clarification on August 16, 1946,* as is alleged in paragraph XXIX. [R. p. 20.] This removed the ambiguity and validated the award. The Exhibit "C-3" award, as so clarified by the Exhibit "C-4" clarification, confirmed the right of plaintiffs, and their class, to construction work on sets [R. p. 79], as follows:

> "* * * The word erection is construed to mean assemblage and such sets on stages or locations. It is to be clearly understood that the Committee recognizes the jurisdiction over construction work on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction."

There was no basis, therefore, for the pretense of a jurisdictional dispute under or following said award, as so clarified, and originally intended.

Attention has been called to said IATSE fraud upon the AFL, and to the ambiguity, and void provisions, in

the Exhibit "C-3" award caused thereby, and to the Committee's "C-4" clarification, clearing the ambiguity, and restoring the award to its original intent of following said collectively bargained agreements, because of the fraudulent pretenses adopted by the conspiring defendants in the mass lockout and replacement that followed.

### The Threats, and the Lockout and Replacement Conspiracy.

In the conspiracy of August and September, 1946, as is alleged in paragraphs XXX to XXXVII [R. pp. 21-24], and as is shown in the Exhibits "D-1" to "D-9" minutes of the meetings of the Producers Labor Committee, a committee composed of representatives of each of the defendant motion picture companies. [R. pp. 81-102.]

### The Minutes Showing the Unlawful Threats.

The Exhibit "D-1" minutes [R. p. 81] show the threat of the defendants IATSE and Walsh, on August 22, 1946, that if the defendant companies respected said Exhibit "C-4" clarification, correcting said fraudulently induced and void provisions in the said Exhibit "C-3" award, said companies would "have all work stopped in the studios, exchanges and theatres," as follows:

> "Discussed new A. F. L. directive (clarification) as to its effect on existing conditions and what it may lead to.
>
> "Later: Walsh advises that any company that makes one single change in the administration of the A. F. L. directive (award) in compliance with the new interpretation (clarification) will have all work stopped in the studios, exchanges and theatres."

## The Minutes Showing the Conspiracy, Mass Lockout and Mass Replacement.

**Said Exhibit "D-2" minutes of the September 3, 1946, meeting** show the pretense of the companies that they could not understand the award or the clarification, as follows:

> "Also wire Eric Johnston still can't understand the directive or its interpretation—is this a directive to compel us to abide or what shall we do. Both Carpenters and Walsh have given us opposite instructions. As we are between *A.F.L. Council must tell us what to do.*" (Italics ours.) [R. p. 82.]

They were asking for an AFL clarification, while refusing to abide by the one they had just received.

**Said Exhibit "D-3" minutes of the September 11, 1946, meeting,** show that the carpenters did no more than ask that the decision of the AFL, in the award as clarified, and the contracts, be respected [R. pp. 83-84], as follows:

> "Cambiano stated he had copies of the directive's (award) interpretation (clarification) and letter from Green stating copies had been sent to Johnston for the industry's information, and that he was here to ask that it be put into effect on the first shift Thursday morning (9/12/46).
>
> "Skelton stated he understands construction to include laying out of sets, laying flooring, cutting flooring, plumbing up sets, etc. Assemblying he thinks 'is the same as prior to March 12, 1945—done by laborers and I.A. setting to a line.'
>
> *"Kahane inquired what will Carpenters do if we do not follow the interpretation. Cambiano answered 'If you do not follow it sets will be declared hot and and we won't work on them.'* (Italics ours.)

*"It was further stated by Cambiano that the sets were hot only after tomorrow—that sets currently built would be finished by Carpenters."* (Italics ours.)

There was no threat to strike. The Carpenters merely asked what belonged to them, and what they had done for years, and what the AFL award as clarified directed.

These minutes show the continued conspiracy, and continued construction of sets by the IATSE, in violation of the contracts, and of the award as clarified, for the fraudulent purpose of assigning carpenters to work in finishing off the illegal sets, with the fraudulent intention to thereby create a fictitious *impasse* between the companies and the carpenters. These minutes continue:

> "The lawyers were asked what our rights are as to firing men for refusing to perform work assigned and what should be done or said in the matter. The following was decided upon: If any men refuse to perform services, lay them off and pay for hours worked only. Put on card 'layed off for refusal to perform work assigned.' Each studio not represented was notified of above by telephone." [R. p. 85.]

While carrying on this pretense of an *impasse* with the carpenters, the companies were in an advance agreement with the IATSE to give it all carpenters' work in the studios. The minutes continue:

> "Kahane answered a phone call and on returning stated 'Brewer says instructions to man the companies means—furnish * * * Carpenters, etc.'" [R. p. 85.]

**Said Exhibit "D-4" minutes, of the September 12, 1946, meeting** show that the New York presidents of the companies, and the president of the Association, were

parties to the conspiracy to replace all carpenters with the IATSE if the carpenters refused to abandon their contractual work tasks:

> "Mr. Kahane reported the recent conversations with the Presidents and Eric Johnston which contained the following recommendations: 'Lay off Carpenters if they refuse to perform the services to which they are assigned. Do not be in any hurry—take as much time as you can before crossing jurisdictional lines. Work with the I.A. to get a sufficient number of Carpenters, * * *" [R. p. 86.]

And show the agreement in advance of the companies to so replace the carpenters with the IATSE on Monday, September 23, 1946 [R. pp. 87-88]:

> "It was agreed by those present to follow the 2nd course but to take time to face the issues and not to put on any I.A. men in place of strikers until after Monday. No one will have to close down a picture on account of no sets before Monday.
>
> "It was decided to call in Brewer to tell him of situation and find out from him if the I.A. is to furnish men to fill places vacated to keep the studios open. * * *"
>
> "The Producers Labor Office will act as a central clearing house to receive daily reports from Studios of the number of men laid off * * *"
>
> "Goldberg asked if he should assign more Carpenters to fill the places of the ones just laid off until all Carpenters are gone and then ask I.A. to fill vacancies. He was advised not to make any substitutions till after Monday next week."

And that it was agreed to do all of this under a uniform plan. Their premeditated conspiracy to create a fictitious incident was expressed in the following sentence from said minutes:

> *"It was agreed each Studio would assign work to Carpenters by Monday to create an incident."* (Italics ours.) [R. p. 89.]

It was by this fraud that *all carpenter employees, not merely those who had customarily done construction work on sets, were laid off as "off payroll" employees, and replaced with the IATSE, in the fraudulent mass lockout of Monday, September 23, 1946.*

**Said Exhibit "D-5" minutes, of the September 16, 1946, meeting** show the conspiracy of the Major Motion Picture Companies, while so acting in conspiracy with the IATSE, *a week before the lockout,* to make a false report to the California Unemployment Authorities, to the effect that the carpenters had left their work on account of a trade dispute, so as to deprive carpenters of the unemployment insurance benefits that would be due them under law.

> "Unemployment Compensation — Cragin of the Loeb office wanted instructions for the Comptrollers as to what position the Producers wanted to take on statement to be made to the State Unemployment Fund. It was agreed to say 'the employee left his work on account of a trade dispute' and to ask the Department to disqualify him for unemployment compensation." [R. p. 90.]

**Said Exhibit "D-6" minutes, of the September 17, 1946, meeting** *show the agreement of the conspiring*

*IATSE and Major Motion Picture Companies to force the independent motion picture companies to abide by their conspiracy, as follows:*

> *"Brewer wanted to correct an erroneous opinion that Independents were not being forced to use Erectors. They are."* (Italics ours.) [R. p. 92.]

They also show the agreement *"to put I.A. men on sets so Carpenters * * * will quit";* and a discussion of *"the proper method of procedure—how and when to get Carpenters * * * to refuse to work—when to replace with I.A. etc."* [R. p. 93]; and an agreement that *"There is to be no hurry to clean out all Carpenters* * * * immediately—running into Friday or even Saturday if necessary" [R. p. 94]; *and a discussion upon the prospective lowered working conditions of the IATSE replacements* (italics ours), as follows:

> *"Overtime and 6 or 8 hour day—No decisions reached—let conditions dictate."* (Italics ours.) [R. p. 95.]

It was upon this conspiracy that the Major Motion Picture Companies, in the dominance they held over the Independents, and the IATSE, forced the Independents to discriminate against the carpenters.

**Said Exhibit "D-7" minutes of the September 20, 1946, meeting** *show an agreement to avoid negotiations with the carpenters, in disregard of their contractual obligation to negotiate,* as follows:

> "Kahane read a proposed reply prepared by Byron Price to the telegram sent by C. S. U. to Pat Casey, dated September 19, 1946. He thinks we should not meet with them before Sunday as they could then use

the argument that the break came on account of wages and not jurisdiction and further we should not offer to negotiate while they refuse to work under their interim agreement." [R. p. 96.]

And to fix a deadline for replacing the carpenters, as follows:

"*Deadline*—By 9 A.M. Monday (September 23) clear out all Carpenters first * * * following which proceed to put on I.A. men to do the work." [R. p. 97.]

**Said Exhibit "D-8" minutes, of the September 23, 1946, meeting** the day of the mass lockout of all carpenters, show that the conspirators acted willfully, and with knowledge that they were violating the law [R. pp. 98, 99], as follows:

"*Lawyers said we can't refuse to bargain and told of consequences. Carpenters situation may* or may not *have been an unfair labor practice,* * * *" (Italics ours.)

"Maintenance Men—Metro and some other studios have requested maintenance men to work on sets, and upon refusal have dismissed them. *Alfred Wright stated the studios cannot morally or legally assign maintenance men who never have worked as journeymen on sets to set work.*" (Italics ours.)

Yet the conspiring Major Motion Picture Companies, in disregard of the legal advice of Alfred Wright, used the trick and device previously agreed upon to lay off all maintenance men, and all other carpenter employees, and re-

place them with the IATSE, in the mass lockout that was going on that day, regardless of whether they had ever done the carpenters' work in construction on sets. The conspiracy was against all carpenters, and upon the gamble that they could get by the NLRB:

> "Benjamin expressed belief that even though N. L. R. B. might decide Producers had engaged in unfair labor practice *there was a good chance the Board might not assess any back pay.*" (Italics ours.) [R. p. 99.]

Said **Exhibit "D-9" minutes of the September 24, 1946, meeting** discloses one of the reasons why the conspiring motion picture companies avoided negotiations with the carpenters, and replaced the carpenters with the IATSE. The minutes recite:

> *"Producers want an eight-hour day."* (Italics ours.) [R. p. 102.]

**The continuance of said lockout, replacement and contract violations** from said September 23, 1946, to and through the enactment of the Taft-Hartley Act and ever since, as alleged in paragraphs XXXV and XXXVI. [R. pp. 23-24.]

**The damages** in excess of the value of $3,000, exclusive of interest and costs, as to each of the plaintiffs, and each of the class in whose behalf they sue, as alleged in paragraph I and in an amount that calls for an equitable accounting, alleged in paragraph XXXVIII. [R. pp. 8, 24.]

## Second Count.

In addition to the allegations of jurisdiction in paragraph I, and the adoption of paragraphs II to XXXVIII of the first count in its paragraph II [R. p. 26], the second count alleges the facts essential to jurisdiction under Section 303 of the LMRA, and under 28 U. S. Code, Sections 1331 and 1337, as follows:

That said lockout of plaintiffs, and their class, has been continued, and maintained by defendant companies to the present time, under said threats from defendant IATSE, to which threats the defendant employers have yielded in the conspiracy as aforesaid, and by said threats against independent producers who have likewise been compelled to boycott plaintiffs, and their said class, as carpenters, as alleged in paragraph III. [R. p. 26.] That such boycott was with the intent and purpose of enforcing the employer defendants, and said other producers of motion picture companies to employ IATSE members and permittees as carpenters in their respective studios rather than plaintiffs, and their said class, as alleged in paragraph IV. [R. p. 27.]

That on July 3, 1947, after the enactment of said LMRA, plaintiffs, and said class, offered and sought to negotiate and bargain with the employer defendants for the purpose of ending said lockout, and said boycott, that they might resume their work tasks under said collectively bargained agreements, or as said contracts might be extended and modified by negotiations; but that defendants refused to so negotiate and bargain with plaintiffs, and said class, and the defendants have since, and now do continue and maintain said violations of said LMRA, as is alleged in paragraphs V and VI. [R. p. 27.]

That on October 23, 1947, individual members of plaintiffs' class, who were respective employees of defendant employers, filed charges of unfair labor practices against said employer defendants, and also against defendant IATSE, with the National Labor Relations Board; that the charges were referred to a Field Examiner in Los Angeles who displayed partiality as alleged in paragraph VII. [R. pp. 27-28.]

That thereafter, on May 10, 1948, over six months after the charges were filed, it became known to plaintiffs, and their class, that said Field Examiner had been, and was then, a member of the IATSE, as is alleged in paragraph VIII. [R. p. 28.]

That thereupon, on May 14, 1948, said complaining members of plaintiffs' class, by counsel, notified the Chairman of the NLRB, in writing, of said disqualification of the Field Examiner, and of the NLRB officers assigning said charges to him for investigation and report, and that the members of plaintiffs' class could not get a fair and impartial hearing of their charges with the request for the designation of an impartial officer; which request was denied, after which the charges against defendant IATSE were dismissed without a fair hearing thereon, as is alleged in paragraph IX. [R. p. 29.]

That the defendants thereby caused plaintiffs, and their class, to be deprived of their lawful work tasks from and ever since the day of said lockout, and caused them to lose and be deprived of their respective unemployment benefits under the laws of the United States and California, as alleged in paragraph X [R. p. 29], and caused them to be damaged as alleged in paragraphs XXXIX and XL of the first count. [R. p. 30.]

### Third Count.

In addition to the allegations of jurisdiction in paragraph I, and the adoption of paragraphs II to XXXVIII of the first count in its paragraph II [R. p. 30], the third count particularly alleges the facts essential to jurisdiction under Sections 1979 and 1980 of the Revised Statutes, the National Labor Relations Act, as amended, the Labor Management Relations Act and the Social Security Act, and therefore under 28 U. S. Code, Sections 1331 and 1337, as follows:

### Right to Collective Bargaining Denied.

That the right to collectively bargain, as granted in Section 7 of the NLRA, and as reenacted in Section 7 of the LMRA, created and vested in plaintiffs, and said class, a civil right under said Section 1980 of the Revised Statutes, guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States, as is alleged in paragraph IV. [R. p. 31.]

That defendants rendered ineffectual said civil right to bargain of plaintiffs, and of their class, and deprived them thereof, as is alleged in paragraph V [R. p. 31], and the preceding second count.

### Right to Hearing Before Labor Board Denied.

That defendants likewise caused the NLRB to deprive plaintiffs, and said class, of their constitutional and statutory right of a full, fair, open and impartial hearing before the NLRB on said unfair labor practice charges, and to deny action thereon, in violation of the NLRA, as amended, and of the LMRA, and of said Civil Rights Act, Section 1979 (8 U. S. C. 43), as is alleged in paragraph VI. [R. p. 31.]

### Right to Hearing Before Unemployment Authorities Denied.

That defendants likewise caused the California Employment Commission to deny certain of plaintiffs, and of their said class, a full, fair, open and impartial hearing before the Department of Employment, its Boards and Officers, upon their respective claims for unemployment and disability benefits, to which they were entitled, and caused them to be deprived thereof in violation of the California Unemployment Insurance Act, as amended, Section 70, and the regulations thereunder, Art. 31, Sections 310 and 315, and in violation of said Civil Rights Act, Section 1980, 8 U. S. C. 47, as alleged in paragraph VII. [R. p. 32.]

That although plaintiffs, and said class, have always been ready, willing and able to bargain with defendants, for the purpose of ending said boycott, and restoring their aforesaid Civil Rights, and have sought so to do, defendants have refused to so bargain with them, as alleged in paragraph VIII [R. p. 32]; to their damage as alleged in paragraphs XXIX and XL of the first count. [R. pp. 25, 32.]

### Fourth Count.

In addition to the allegations of jurisdiction under 28 U. S. Code, Section 1343, and the Sherman and Clayton Acts (15 U. S. C., Sections 1, 15), in paragraph I, and the adoption of paragraphs II to XXXVIII of the first count in paragraph II [R. p. 33], the fourth count particularly alleges facts essential to the jurisdiction in anti-trust actions.

## Specification of Errors.

Appellants' statement of the points upon which they intend to rely on this appeal [R. p. 198], is as follows:

1. The order of the District Court, dated July 1, 1949, dismissing the above entitled and numbered cause, without leave to amend [R. pp. 144-145], is contrary to law, and not sustained by the record.

2. The Court had jurisdiction:

   (a) Under Title 28 U. S. Code Section 1331;

   (b) Under Title 28 U. S. Code Section 1337; and

   (c) Under Title 28 U. S. Code Section 1343.

3. The Court had jurisdiction under the Fifth and Fourteenth Amendments of the Constitution of the United States.

4. The Court had jurisdiction under the laws of the United States regulating commerce, particularly: The National Labor Relations Act, Section 7, and the other sections thereof, as amended; the Labor-Management Relations Act, 1947, Sections 7, 301 and 303, and the other sections thereof; the Third Civil Rights Act, R. S. 1979, 1980; and the Sherman and Clayton Acts.

5. That upon holding that the Court had no jurisdiction the Court had no power or authority to adjudge that plaintiffs' second amended and supplemental complaint fails to state a claim upon which relief can be granted.

6. That plaintiffs' said complaint, and each count thereof, does state a claim upon which relief should be granted.

## Summary.

The defendant motion picture companies were, and are, engaged, and employed plaintiffs and their class. as members of the Brotherhood of Carpenters, Local 946, in interstate commerce.

Plaintiffs, and their class, were employed and worked under the following collectively bargained contracts, which thereby became their own:

### Plaintiffs' Rights Under Carpenter-IATSE Jurisdictional Agreement.

The Exhibit "A" jurisdictional agreement between the Brotherhood of Carpenters and the IATSE, dated July 9, 1921, which was never terminated, and which by its terms defined the work of the carpenters [R. p. 37] as follows:

> "All carpenter work in and around Moving Picture Studios belongs to the carpenters. This includes:
>
> "1. Any and all carpenter work in connection with the Moving Picture Studios, the construction of stages or platforms on which buildings or parts of buildings are to be erected.
>
> "2. All carpenter work in connection with the erection of any building or part of building, from which a picture is to be taken.
>
> "3. The operation of all wood-working machinery in the making of all furniture, fixtures, trim, etc., for use in Motion Picture Studios, belongs to the carpenter."

## Plaintiffs' Rights Under Industry-Wide Agreements.

The Exhibit "B-1" basic agreement dated November 29, 1926, between the defendant Major Motion Picture Companies and various AFL unions, including both plaintiffs Brotherhood of Carpenters and said IATSE. It set up machinery [R. p. 41]:

> To "hear or consider all requests or grievances or other questions affecting wages, hours of labor or working conditions in the studios of the Producers, which have failed of local adjustment, and any other matters as to which such joint consideration will tend to avoid misunderstandings, or will tend to improve the condition of the industry and of its employees."

The Exhibits "B-2" to "B-8" extending, renewing and enlarging upon said Exhibit "B-1" basic agreement, including the "B-6" closed shop agreement of December 8, 1935, the successive agreements on mechanics wage scale and working conditions. All of said agreements were made during the observance of, and therefore in recognition of, said Exhibit "A" jurisdictional agreement. The closed shop agreement provided [R. p. 52]:

> "* * * that all employees working under the jurisdiction of the following International Unions would work under closed shop conditions * * *
>
> "Therefore, effective January 2, 1936, every employee in a studio working under the jurisdiction of these above International Unions shall have to carry a card in his respective Union."

*All of said Exhibits "B-1" to "B-8," inclusive, were extended to October 13, 1946* [R. p. 54]. Plaintiffs and their class, therefore, as parties to said collectively bargained agreements, were entitled to the work tasks de-

fined for carpenters in the Exhibit "A" agreement, under the closed shop provisions of the Exhibit "B-6" agreement, and upon the six hour day basis of the said agreements on mechanics wage scale and working conditions, when they were locked out en masse, and replaced with the IATSE on September 23, 1946.

PLAINTIFFS' RIGHTS UNDER AFL AWARD AS CLARIFIED.

Plaintiffs, and their class, worked under said Exhibit "A" jurisdictional agreement, and said Exhibits "B-1" to "B-8," inclusive, agreements until the conspiracy between the defendant IATSE and the defendant Major Motion Picture Companies in April, 1945, to replace all carpenters with the IATSE, in violation of said contracts (*supra,* p. 9).

Upon failure of said April, 1945, conspiracy, and upon the AFL condemnation of the illegal practices of the IATSE, plaintiffs, and their class, resumed all of their said work tasks, and continued in the performance thereof until after the December 26, 1945, Exhibit "C-3" AFL Committee award [R. pp. 17-20; *supra,* p. 10].

After said award was issued, and when it became known that its terms were ambiguous, between one provision to follow existing contracts and another provision substituting the terms of a pretended contract which never existed, which substitution was so induced by said secret, false and fraudulent testimony of defendant Walsh, for defendant IATSE, and which substitution was beyond the scope of authority of the AFL Committee: plaintiffs through their unions, the Brotherhood of Carpenters and Local 946, protested the illegal provision in the award. *Said Major Motion Picture Companies also requested a clarification thereof* [R. p. 20].

Thereafter, on August 16, 1946, said AFL Committee issued the Exhibit "C-4" clarification, removing the ambiguity, and validating the award by provisions including the following [R. p. 79]:

> "* * * It is to be clearly understood that the Committee recognizes the jurisdiction over construction work on such sets as coming within the purview of the United Brotherhood of Carpenters and Joiners jurisdiction."

This restored to the carpenters the work tasks that had been wrongfully taken from them by the illegal provisions in said Exhibit "C-3" award, and again gave them the unquestionable right to all carpenters' work defined in the Exhibit "A" jurisdictional agreement, and secured by the Exhibit "B-6" closed shop agreement, and observed through the years.

PLAINTIFFS' RIGHTS UNDER "INTERIM" AGREEMENT.

Pending the issuance of said clarification, plaintiffs, and their class, acting through their said Local 946, entered into the Exhibit "B-9" "Interim" Agreement of July 2, 1946, with the defendant motion picture companies. It was manifestly called an interim agreement because of its contemplation that a formal agreement was to be negotiated, again manifestly in extension, or modification of the said "B-1" to "B-8," inclusive, agreements that had previously been extended to October 13, 1946, as aforesaid.

Particular attention is called to certain provisions in the "interim" agreement [R. pp. 55-60; *supra,* pp. 4, 8], as follows:

> It was a "contract for two years" [R. p. 58], and pending negotiations, as hereinafter stated;
>
> It was an agreement for "all crafts going back to work * * *" [R. p. 58];

It provided a six hour day for carpenters, with time and a half for overtime [R. p. 59]; and

It was an agreement for collective bargaining of a formal contract, in that it itself was entered into *"pending the completion of contracts"* * * * *"covering agreements reached and effective pending the formal signing of contracts"* [R. p. 55]; and upon the advance understanding that *"an interim agreement will be entered into pending drawing up formal agreements"* [R. p. 56].

Plaintiffs, and their class, were also employed, and worked under this interim agreement, and thereby became entitled to all rights thereunder, on the September 23, 1946, date of the lockout, thereafter for the two year period to July 1, 1948, and thereafter pending *bona fide* negotiations of a formal contract.

### Violation of Contracts and Unlawful Acts by IATSE in Unlawful Threats and Demands.

Defendant IATSE, acting through defendant Walsh, thereupon violated said Exhibits "A" and "B-1" to "B-8," inclusive, collectively bargained contracts, by its repudiation of said AFL Exhibit "C-4" clarification, and unlawful demands that defendant motion picture companies follow the illegal and void provisions of the Exhibit "C-3" award, which said Walsh had so fraudulently induced, *or else "have all work stopped in studios, exchanges and theatres"* [R. p. 81].

In said threats and demands defendant IATSE reverted to its pattern of unlawful operations, as is shown in the reported opinion in *Loew's, Incorporated, v. Basson,* 46 Fed. Supp. 66, excerpts from which are hereinafter quoted [*Infra,* p. 46].

VIOLATION OF CONTRACTS BY DEFENDANT MOTION PICTURE COMPANIES, IN CONSPIRACY WITH THE IATSE.

Instead of resisting said unlawful threats and demands of the IATSE, as defendant Loew's, Incorporated, had successfully done in said case of *Loew's, Incorporated v. Basson,* the defendant companies submitted to said threats, yielded to said demands, and embraced said IATSE in conspiracy, in the following particulars:

In the false pretense that the defendant companies were caught between the carpenters and the IATSE in a trade dispute (*supra,* p. 12);

In the fraudulent agreement to lay off all carpenter employees and replace them with the IATSE (*supra,* pp. 13, 14), to which end *"it was agreed each studio would assign work to carpenters by Monday to create an incident* (*supra,* p. 15);

To likewise force the Independent Motion Picture Companies to replace carpenters with the IATSE (*supra,* p. 16), in contemplation of substituting an eight hour day for the carpenters' contractual six hour day (*supra,* pp. 16, 18);

In the agreement *"to put I.A. men on sets so carpenters * * * will quit";* in a discussion of *"the proper method of procedure—how and when to get carpenters * * * to refuse to work—when to replace with I.A., etc.";* with the agreement that "there is to be no hurry *to clean out all carpenters* (*supra,* p. 16);

To avoid negotiations with the carpenters (*supra,* pp. 16, 17), knowing that it would be an unfair labor practice (*supra,* p. 18);

To set a uniform deadline for 9 a.m. Monday, September 23, 1946, to *"clear out all carpenters first * * * following which proceed to put on I.A. men to do the work"* (*supra*, p. 17);

To assign maintenance carpenters to a type of work they had never performed, although counsel advised them that *"the studios cannot morally or legally assign maintenance men who never have worked as journeymen on sets to set work"* (*supra*, p. 17);

To proceed with their unfair labor practices upon the *"chance the Board might not assess any back pay"* (*supra*, p. 18);

With the declared motive that *"Producers want an eight hour day"* (*supra*, p. 18); and

In the fraudulent agreement, one week in advance of the lockout, to make the false representations to the State Employment Department that the victimized and aggrieved carpenters had each " 'left his work on account of a trade dispute,' and to ask the Department to disqualify him for unemployment compensation" (*supra*, p. 15).

## The Continuous and Continuing Wrongs Committed by the Conspiring Defendants.

The mass lockout, the mass replacement of carpenters with the IATSE, the avoidance of collective bargaining with the carpenters, the false representations to the State Unemployment Authorities, and the avoidance of an accounting before the National Labor Relations Board, and the violations of the Sherman and Clayton Acts have continued to the present day, to the damage of the plaintiffs, and their class, as they allege and pray.

## ARGUMENT.

Each of the following points is made both for appellants and in the public interest.

### POINT I.

### Plaintiffs, and Said Class for Whom They Sue, Each as Individual Employees, Became Parties to Said Collectively Bargained Contracts When They Accepted Employment and Worked Thereunder; and Each Had a Right of Action for the Violation Thereof, Before the Enactment of the Labor Management Relations Act.

The memorandum opinion of the District Court correctly states that jurisdiction exists for parties to the contracts, but erroneously excludes individual employees as parties thereto [R. p. 138], as follows:

> "The legislative history indicates to me beyond dispute that the intention of Congress by Section 301 was to provide a forum, other than the street, for settlement of asserted violations of labor contracts by law suits, the parties to which could only be the parties to the contract involved, *i. e.,* either the employer or the *labor organization*: And that it was intended that the *labor organization alone could speak as a party to the suit on behalf of the employees it represented as a party to the contract.*" (Italics ours.)

1. **THE COURT ERRED IN ASSUMING THAT PLAINTIFFS, AND THEIR CLASS, WERE NOT PARTIES TO THE COLLECTIVELY BARGAINED CONTRACTS, BECAUSE EACH OF THEM BECAME PARTIES THERETO WHEN THEY ACCEPTED EMPLOYMENT AND WORKED THEREUNDER.**

Reference is made to the allegations in paragraphs VI, XIII and XVIII [R. pp. 11, 13, 15], that plaintiffs, and the class for whom they sue, were employed, or eligible for employment, by the defendant motion picture companies, and that they are now eligible for employment in said work tasks, under said collectively bargained contracts.

Attention is called to the fact that under said contracts the membership of said Local 946 constituted a pool of carpenters subject to the call of said defendant companies as need required, with the seniority right of being called, if and when additional carpenters, *or replacements,* should be needed.

The said collective bargaining contracts had been accepted by all of the members of Local 946, who had worked thereunder at one time or another, and, therefore, the class is not restricted to those particular members who were working on the day of the lockout.

*Yazoo & M. V. R. Co. v. Webb* (5th Cir.; April 1933), 64 F. 2d 902, at 903:

> "*An agreement upon wages and working conditions between* the managers of an *industry and its employees,* whether made in an atmosphere of peace or under the stress of strike or lockout *resembles in many ways a treaty.* As a safeguard of social peace it ought to be *construed not narrowly and technically but broadly and so as to accomplish its evident aims*

*and ought on both sides to be kept faithfully and without subterfuge.* In no other way can confidence and industrial harmony be sustained." (Italics ours.)

"But *in itself it can rarely be a subject of court action because it is incomplete. It establishes no con-concrete contract between the employer and any employee.* No one is bound thereby to serve, and the employer is not bound to hire any particular person. *It is only an agreement as to the terms on which contracts of employment may be satisfactorily made and carried out. It is a mutual general offer to be closed by specific acceptances."* (Italics ours.)

"When negotiated by representatives of an organization it is called collective bargaining, but ordinarily the laws of the organization, which constitute the authority of the representatives to act, do not require the individual members to serve under it, but only that *if they serve they will do so under its terms and will join in maintaining them as applied to others."* (Italics ours.)

"When the agreement is published by the managers, *it becomes* until abrogated *the rule of that industry and any individual who thereafter continues in its employment or takes new employment takes it on the terms thereby fixed."* (Italics ours.)

"*Ordinarily,* as in this case, *there is no period fixed for the hirings and* they are at the will of the parties, *the employer having the right to discharge at any time* and the employee having the right to quit. *But the employment* though indefinite as to time *is a relationship while it lasts, and is subject to the conditions fixed in the working agreement* for the industry." (Italics ours.)

> *"Thus a worker cannot be discharged for causes prohibited by the agreement* or without a hearing if that is provided, *and the agreed seniorities must be observed in promoting, laying off, or re-employing men."* (Italics ours.)

The *Yazoo* case has been followed, in the statement of law above quoted, since the enactment of the NLRA.

2. THE COURT ERRED, THEREFORE, IN SAID CONCLUSION "THAT THE LABOR ORGANIZATION ALONE COULD SPEAK AS A PARTY TO THE SUIT ON BEHALF OF THE EMPLOYEES IT REPRESENTED AS A PARTY TO THE CONTRACT."

*Gatliff Coal Co. v. Cox* (6 Cir., 1944), 142 F. 2d 876, was an action, by an individual employee, for wages due him "under a bargain contract between the Southern Appalachian Coal Operators' Association and District 19, United Mine Workers of America" (p. 878). The case was transferred to the Federal Court "on the ground of diversity of citizenship * * *." In the Federal Court the defendant employer pled that there was no cause of action (p. 879), as follows:

> "Appellant alleged in paragraph 1 of its answer that the court was without jurisdiction of the subject matter of appellee's cause because appellee had no justiciable rights under the bargaining agreement between the coal operators' association and the labor organization * * *."

At 880, the Court reaffirms the law as stated in the *Yazoo* case, in the following language:

> "By itself, the collective agreement constitutes no contract between the individual employee and the com-

pany which employs him. It is only an understanding as to the terms on which a contract of employment may be satisfactorily made and carried out. It is a mutual, general offer to be closed by acceptance. When the collective agreement is signed by the individual members of the employers' association and the collective bargaining agent of the labor organization, no other contract being shown, it becomes, until abrogated, the rule of the individual employer and any person who thereafter continues in the employment of the employer or takes new employment with him becomes entitled to all the benefits of the collective agreement and incurs all of its obligations."

And continues with the following statement that is particularly applicable here:

> *"Since appellee was employed by appellant at the time the collective agreement was entered into between* the Southern Appalachian Coal Operators' Association *and District No. 19, United Mine Workers* of America and he thereafter continued in the employ of appellant and there being no showing that he made any individual contract conflicting with the collective agreement, *appellee's rights arising out of his employment by appellant and the wages due him, if any, must be measured by the collective agreement. Appellee had the right under the circumstances here appearing to maintain the present action."* (Italics ours.)

The employees speak for themselves in this case, and through the union in appeal No. 12345.

## POINT II.

**Both Sections 301 and 303 of the Labor Management Relations Act Are Constitutional; Both Created Federal Rights and Rights of Action; and Both Vested Jurisdiction in the Federal Courts in Cases Arising Thereunder.**

*Colonial Hardwood Flooring Co., Inc. v. International Union,* 76 Fed. Supp 493, like the present case dealt with two counts, under Sections 301 and 303, respectively, and at page 494, states:

> "The complaint in this case is in two counts. Count 1 is based on section 301 of the recent Act of Congress known as the Labor Management Relations Act, * * *
>
> "Section 301(a) authorizes suits for violation of contracts between employer and the labor organization representing employees * * *.
>
> "The complaint alleged that contrary to the express provision of the contract on or about October 3, 1947, the defendants caused a strike or stoppage of work at the plaintiff's furniture plant in consequence of which it sustained substantial damages."

And at 495:

> "Count 2 of the complaint is based on section 303 of the Labor Management Relations Act, 29 U. S. C. A. Sec. 187, which, shortly stated, prohibits secondary boycotts. The count alleges the occurrence of a secondary boycott by the defendants with consequent substantial damage to the plaintiff's business * * *.
>
> "* * * The defendants separately have filed motions to dismiss the complaint on many separate grounds. They will be considered separately and briefly at this time."

And at 496:

"(5) The defendants also raise various constitutional questions. First it is said that the court is without jurisdiction of the case in the absence of diversity of citizenship. * * * The Labor Management Act creates important substantive rights between employers and employees engaged in interstate commerce, and section 301 expressly authorizes suits of this character in district courts of the United States. It is clearly, therefore, a suit arising under a law of the United States.

"(6) The constitutionality of section 301 is also challenged on the ground that it violates the due process clause of the Fifth Amendment in its alleged retrospective operation on contracts existing prior to the passage of the Act. But in my opinion the Act is prospective and not retrospective in character. It is not retrospective merely because it gives additional remedies for the future breach of then existing contracts.

"(7) The same constitutional objection is urged as to section 303 of the Act but is equally untenable, at this stage of the case."

Attention is called to the fact that plaintiffs' cause of action, as alleged in the first count, is not retrospective, but is based upon a violation of the collectively bargained contracts, a violation that continued after the enactment of the Labor Management Relations Act, and that still continues.

*International Union United Furniture Workers of America, et al. v. Colonial Hardwood Flooring Co., Inc.*, 168 F. 2d 33, affirms the foregoing District Court ruling.

Having shown that Sections 301 and 303 are constitutional, and that actions may be maintained under each in a single suit, jurisdiction under both in this case will now be shown.

## POINT III.

### Said Section 301(a) of the Labor Management Relations Act Gives Plaintiffs, and Said Class, a Substantive Federal Right of Action, Based Upon the Continued Violation of Said Contracts, as Alleged in the First Count; and Vests Jurisdiction in the Federal Court Without Diversity of Citizenship.

The memorandum opinion of the District Court states a conclusion to the contrary [R. p. 139]:

> "I conclude, therefore, that Section 301 does not give the plaintiffs as individual members of a union the right to sue in asserted violation of the contracts involved, whether their union was or was not a direct party to such contracts."

Reference is made to the abstract and statement of the first count in the complaint (*supra,* pp. 7-18), and to the summary (*supra*, pp. 24-30).

1. THE COURT ERRED IN ITS CONCLUSION DENYING THIS JURISDICTION, BECAUSE THE ACT IS WRITTEN PRIMARILY FOR EMPLOYEES, AND SECONDARILY FOR THEIR LABOR ORGANIZATIONS.

> *"Sec. 301(a).* Suits for violation of *contracts between an employer and a labor organization representing employees* in an industry affecting commerce as defined in this Act, or between any *such* labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties." (Italics ours.)

The italicized words show that the section relates to collectively bargained contracts negotiated by "a labor or-

ganization representing employees," meaning, of course, for employees. This is the intent of the Act.

"Section 1(b). * * *

"It is the purpose and policy of this Act, * * * to prescribe the legitimate rights of both *employees* and employers * * * to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the others, to protest the rights of *individual employees* in their relations with labor organizations * * *." (Italics ours.)

"Sec. 7. *Employees* shall have the right * * * to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, * * *." (Italics ours.)

"Sec. 8(a). It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce *employees* in the exercise of the rights guaranteed in section 7;". (Italics ours.)

## 2. THE COURT ERRED IN SO DENYING JURISDICTION UNDER SECTION 301(a), BECAUSE CONGRESS, "HAVING CREATED A SUBSTANTIVE RIGHT," COULD AND DID "ALSO PROVIDE THE PROCEDURE FOR ENFORCING THAT RIGHT."

The above quoted language is taken from the following well considered case.

*Wilson & Co., Inc. v. United Packing House Workers,* 83 Fed. Supp. 162, at 163:

"Action by Wilson & Company, Inc., against United Packinghouse Workers of America, *a labor*

*organization* affiliated with the Congress of Industrial Organizations, * * * *for damages for breach of collective bargaining contracts,* wherein the United States intervened. *On motion by defendant unions to dismiss for want of jurisdiction. Motion denied."* (Italics ours.)

And at 164:

"Plaintiff alleges that it is engaged in a business affecting commerce and that the defendants are labor organizations and voluntary unincorporated associations representing employees in an industry affecting commerce and have officers and agents engaged in such representation in this district. *The defendants are alleged to have breached the terms of the agreement* by causing strikes and work stoppages in March of 1948 in certain of plaintiff's plants located in New York." (Italics ours.)

*"Jurisdiction is invoked under Section 301(a)* of the Labor Management Relations Act, 1947, * * * *and under 28 U. S. C. A. Sec. 1337,* which provides that 'the district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce * * *." (Italics ours.)

"(1) *First. It is contended by defendants that Section 301(a) is unconstitutional as applied to this case,* * * *.

"Defendants argue that the action is one for breach of contract, to enforce a right existing under the common law of the State of New York; that there is no diversity of citizenship, and the case is not one arising under the Constitution or laws of the United States or upon any other ground set forth in Article III, Section 2 of the Constitution. Consequently, runs the argument, Congress was without power to

confer jurisdiction over the case on the District Court. (Citing cases.) *The argument must fail.*" (Italics ours.)

And at 165:

"* * * Section 301 (a) of the Act, authorizing suits for violation of such agreements, would be meaningless on any other hypothesis and would attribute to Congress the anomalous action of providing for remedy and a forum in which to enforce it, without creating a right to remedy or to enforce. The very inclusion of Section 301 shows, on its face, and the legislative history of the Act confirms the Congressional intention, that other provisions of the Act, for redressing unfair labor practices, were not an exclusive statement of the rights created by the Act, and did not eliminate or militate against the right to seek relief in the federal courts for violations of collective bargaining agreements between employers and labor organizations."

"* * * *The Labor Management Act creates important substantive rights* between employers and *employees* engaged in interstate commerce, and section 301 expressly authorizes suits of this character in district courts of the United States. It is clearly, therefore, a suit arising under a law of the United States." (Italics ours.)

And at 166:

"* * * In view of the fact that the enforcement of a federal right is involved in the instant case, the argument falls. It is clear that *Congress, having created a substantive right* in the exercise of its power under the commerce clause, art. 1, sec. 8, Cl. 3, *may also provide the procedure for enforcing that right by making voluntary labor organizations legal entities for the purpose of suit. United Mine Work-*

*ers of America v. Coronado Coal Co.*, 259 U. S. 344, 383-392, 42 S. Ct. 570, 66 L. Ed. 975, 27 A. L. R. 762; *cf.* Rule 17(b) of the Federal Rules of Civil Procedure. Insofar as state laws may conflict, they must yield to the paramount congressional legislation when a federal right is asserted as the basis of suit." (Italics ours.)

There is nothing novel in the provisions of Section 301(a) dispensing with diversity of citizenship, as a jurisdictional requirement in cases arising under said section. The requirement of diversity was dispensed with in the Sherman and Clayton Acts, and in various other federal statutes. *That is also the purpose of 28 U. S. Code, Sec. 1337.*

### 3. DEFENDANT ASSOCIATION IS AN EMPLOYER WITHIN THE MEANING OF THE ACT, AND UNDER THE ALLEGATIONS OF THE COMPLAINT.

*In the Matter of Association of Motion Picture Producers, Inc., et al.* (each of the defendant motion picture companies), 79 Dec. NLRB 466, at 480:

> "A. *Is the Association an employer within the meaning of the Act?*
>
> "The Act defines an employer to include 'any person acting in the interest of an employer, directly or indirectly . . .' In a companion Intermediate Report dated March 20, 1947, issued by the undersigned, the question of whether the Association was an employer within the meaning of the Act arose and it was there answered in the affirmative. The record herein presenting the same basic facts, is even more persuasive and leads to the same conclusion."

### 4. ALL THE CONSPIRING DEFENDANTS ARE LIABLE.

*Allen Bradley Co. v. Local Union 3, International Brotherhood of Electrical Workers, et al.,* 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939.

### 5. SECTION 301(a) GIVES JURISDICTION IN THIS SUIT BROUGHT BY PLAINTIFFS, AND SECTION 301(b) GIVES JURISDICTION IN SUIT NO. 12345, BROUGHT BY THE LOCAL UNION FOR, AND AS REPRESENTATIVE OF, ITS MEMBERS, WITHOUT CONFLICT BETWEEN THE TWO SUITS, AS JURISDICTION LIES IN EITHER OR BOTH.

The United Steel Workers of America and its members did join as plaintiffs, and the motion to dismiss their complaint was denied as to both, in the following case in the District Court for the Western District of Michigan, Southern Division, where the opinion was rendered and decision made on February 14, 1949.

*United Steel Workers of America, et al. v. Shakespeare Co., et al.,* 84 Fed. Supp. Adv. 267:

> "Action by United Steel Workers of America (U. S. A.-C. I. O.), *and others* (later identified as members) against the Shakespeare Company and others *for a judgment determining rights of parties under a collective bargaining agreement,* for a determination that defendants had wrongfully terminated the agreement *and for damages. On motion to dismiss the complaint. Motion denied."* (Italics ours.)

And at 269:

> "The strained relations between these parties continued, and on November 16, 1948, *plaintiff union and representatives and members of the union* filed

complaint against defendants in the present suit. *They allege,* among other things, *that the collective-bargaining agreement* of July 16, 1947, *had not been legally terminated* by defendants * * *." (Italics ours.)

And at 270:

"(1) It should be kept in mind that in their amended complaint *plaintiffs do not ask for injunctive relief* against so-called unfair labor practices or for any other form of injunctive relief. *They ask* only for a determination of their rights under the collective-bargaining agreement in question and *for a determination of their damages* claimed to have been *sustained as a result of defendants' alleged violation of the agreement.* (Italics ours.) Plaintiffs' amended complaint and their claim of jurisdiction are based on Title III, Sec. 301(a) of the Labor Management Relations Act of 1947, 29 U. S. C. A. Sec. 185(a), * * *

*"The defendants cite and rely upon the cases of Amazon Cotton Mill Co. v. Textile Workers Union,* 4 Cir., 167 F. 2d 183, and *International Longshoremen's & Warehousemen's Union v. Sunset Line & Twine Co.,* D. C. 77 F. Supp. 119, as supporting their contention that this court is without jurisdiction of the present case. *However, in those cases the plaintiffs asked for injunctive relief,* and the courts correctly held that proceedings to enjoin *unfair labor practices were within the exclusive jurisdiction* of the National Labor Relations Board, and that a Federal district court did not have jurisdiction to enjoin unfair labor practices. *Furthermore, those cases did not involve alleged violation of collective-bargaining agreements and, therefore, were not within the purview of Section 301(a)* of the Labor Manage-

ment Relations Act. The theory on which those cases were based, and the factual situations involved, clearly distinguish them from the present case." (Italics ours.)

And at 271:

"It is elementary that in considering a motion to dismiss the court must assume the truth of all material and well-pleaded allegations of fact. The amended complaint alleged numerous acts of violation of the collective-bargaining agreement by defendants prior to October 9, 1948, and, assuming the truth of those allegations, the court concludes that the amended complaint states a claim upon which relief could be granted."

And at 272:

"In summary, the court concludes:

"(1) That it has jurisdiction of the matters alleged in plaintiffs' amended complaint; and

"(2) That, assuming the truth of all material and well-pleaded allegations of fact, the amended complaint states a claim upon which relief could be granted.

"Defendants' motion to dismiss the amended complaint is accordingly denied."

It is submitted, therefore, that the only issues under Sections 301 and 303 are whether plaintiffs' first and second counts qualify under them, respectively.

## POINT IV.

### Said Section 303 of the Labor Management Relations Act Gives Plaintiffs, and Said Class, a Substantive Federal Right of Action, Based Upon the Continued Acts of the Conspiring Defendants, as Alleged in the Second Count, and Vests Jurisdiction in the Federal Court Without Diversity of Citizenship.

The memorandum opinion of the District Court states a conclusion to the contrary [R. p. 140], as follows:

> "Without determining whether or not the plaintiffs could be proper party plaintiffs in any action against the I.A.T.S.E. in this or any other court, *i.e.*, if they could state a cause of action for violation of Sec. 303 (a), it seems clear to me that this court was not granted jurisdiction."

#### 1. DEFENDANT IATSE, AND ITS OFFICERS, OPERATE ON A PATTERN OF AGGRESSION THAT IS UNLAWFUL.

The IATSE pattern of aggression was held illegal before the enactment of the Labor Management Relations Act, in a suit brought by Loew's, Incorporated, for itself and other Major Motion Picture Companies.

*Loew's, Incorporated v. Basson, et al.,* including IATSE locals (*supra,* p. 28), recites the IATSE pattern of unlawful demands (p. 69), as follows:

> "The complaint further alleges that on December 11, 1941, referring to a proposed new contract between plaintiff and Local 306 with respect to the projection men employed at plaintiff's New York exchange and home office, defendant Local 306, by its attorney, wrote plaintiff a letter which stated in part:

"* * * Local 306, is requesting that the collective agreement, to be executed between our respective clients, shall provide, among other satisfactory conditions of employment, such as wages, hours, working conditions, and term of contract, the following clauses in substance:

" '1. Employer agrees to supply, rent, lease, sell, deliver, license, distribute or provide films in the City of Greater New York only to such exhibitors as employ and continue to employ solely members of Local 306 as projectionists, and the Employer agrees not to supply, rent, lease, sell, deliver, license, distribute or provide film to any exhibitor in the City of Greater New York not employing members of Local 306.

" '2. Members of Local 306 shall not be required, directly or indirectly, to work with, handle or work upon film, which was not or is not to be handled, transported and projected in the City of Greater New York, solely by members of the International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, or its subsidiary locals, or the members of such union as is approved by the International Alliance, and which is recognized by one of the Central Organizations with which Local 306 is affiliated.

" '3. * * * Employer further agrees that the agency which delivers the film shall not be re-required to deliver and need not deliver film to any exhibitor within the City of Greater New York who does not employ and continue to employ as projectionists solely members of Local 306.

" '4. Employer agrees that film bearing the label of the International Alliance will be supplied for exhibition in the City of Greater New York only to such exhibitors as employ and continue to employ as projectionists solely members of Local 306."

And recites the unlawful pattern of threats, at page 69, as follows:

> "The complaint then alleges that at conferences between representatives of plaintiff and Local 306, plaintiff was told that it must immediately comply with the terms and conditions set forth in the letter of December 11, 1941 or else Local 306 would immediately call out on strike its members who are employed as projectionists in plaintiff's home office and New York film exchange, and upon the request of Local 306, to be made immediately, 'IATSE' will call out on strike all the members of Local 306 who are employed as projectionists in plaintiff's sixty-five theatres in Greater New York City, all members of Local B 51 employed in plaintiff's New York exchange and all members of any affiliated unions of 'IATSE' who are employed in plaintiff's studio at Culver City, California."

And recites the relief then sought by Loew's, Inc., at page 69, as follows:

> "The complaint seeks a declaratory judgment * * *; (a) that the demands of the defendants are illegal and contrary to law and compliance therewith by plaintiff is prohibited by law; (b) that in making these demands, defendant is not, and in enforcing said demands by strikes or other means of economic compulsion, defendant would not be a person participating in a labor dispute within the meaning of the Norris-LaGuardia Act, * * *; (c) that a contract between plaintiff and defendant which would include the terms and conditions set forth in defendant's letter of December 11, 1941, would be a contract in restraint of trade in violation of the Sherman Anti-Trust Act, * * * Sec. 1; (d) that compliance with defendant's demand would be a violation of the con-

sent decree in *United States v. Paramount Pictures Inc.* and (e) that if all of the distributors would comply with defendant's demands, a conspiracy would result which would constitute a violation of the Sherman Anti-Trust Act, * * *. The complaint also seeks a permanent injunction enjoining the defendant from taking any steps to call strikes and inducing 'IATSE' to call strikes."

And the Court's ruling on the IATSE motion to dismiss, at page 72 as follows:

"Accordingly, defendant's motion is denied in all respects, * * *."

The foregoing quotations show the IATSE pattern, to make unlawful demands, and to force said unlawful demands by illegal threats, so as to induce employers into conspiracy and fraud.

## 2. SECTION 303(a) MAKES SAID IATSE PATTERN OF AGGRESSION UNLAWFUL, UNDER THE FACTS IN THIS CASE.

"Sec. 303. (a) *It shall be unlawful,* for the purposes of this section only, in an industry or activity affecting commerce, *for any labor organization* to engage in, or *to induce or encourage the employees of any employer to engage in,* a strike or *a concerted refusal in the course of their employment to* use, manufacture, process, transport, or otherwise *handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—*

"(4) *forcing or requiring any employer to assign particular work to employees in a particular labor*

*organization* or in a particular trade, craft, or class *rather than to employees in another labor organization* or in another trade, craft, or class * * *." (Italics ours.)

It has been shown, under Point II, that this Section 303(a) is constitutional, and that it creates a substantive federal right in aggrieved parties (*supra,* p. 36).

*Colonial Hardwood Flooring Co., Inc. v. International Union* (*supra,* p. 36), as affirmed in *International Union, etc.* (*supra,* p. 37).

In substance and effect said, Section 303(a) provides that "it shall be unlawful," in this industry "affecting commerce," for the IATSE to "encourage" IATSE member "employees of" the defendant companies to "engage in a strike or a concerted refusal in the course of their employment," in other capacities, "to use * * * or otherwise handle or work on any" motion pictures produced by defendants, with the "object" of "forcing or requiring" said picture company employers "to assign" work tasks, belonging to the carpenters, under said collectively bargained contracts, to IATSE member employees, in mass replacement of the carpenters.

This section does not require that the offending IATSE shall have caused its members to strike. An actual strike is not essential. The offense was for the IATSE to "encourage" its members "to strike" or to "encourage" them to enter in "a concerted refusal" to use or handle motion picture products of the defendant employers.

The IATSE did "encourage" its members "to strike," and did "encourage" its members to join in "a concerted refusal" to handle or work on the defendant employers'

product in motion pictures, by its threat to "have all work stopped in the studios, exchanges and theatres" of the defendant companies. (*Supra,* p. 11.)

It was by said means that the defendant IATSE, and its officers, induced the defendant motion picture companies, and Association, to join in the conspiracy and fraud culminating in the September 23, 1946, mass lockout of all carpenter employees, and replacement of them in their contractual work tasks with the IATSE.

It has been shown that said lockout and replacement, under said threats and demands, and in said conspiracy, continued after the enactment of the Labor Management Act, and still continues as a result of the continuing unlawful acts of defendant IATSE.

### 3. SECTION 303(b) PROVIDES THE FEDERAL REMEDY, WITHOUT DIVERSITY OF CITIZENSHIP, TO ENFORCE THE FEDERAL SUBSTANTIVE RIGHT CREATED BY SAID SECTION 303(a).

It has been shown under Point II, that this Section 303(b) is constitutional.

*Colonial Hardwood Flooring Co. v. International Union United Furniture Workers of America, et al.,* there cited (*supra,* p. 36), was a federal court action *without diversity of citizenship.* At page 494 the opinion states:

> "The plaintiff is a Maryland corporation engaged in the manufacture of woodwork in the City of Hagerstown, Maryland * * *. The other defendant, United Furniture Workers of America, Local 472, is a local Union having its principal business offices at Hagerstown, Maryland."

One count in this *Colonial* suit, as in the present case, was brought under said Section 303 (p. 495):

> "Count 2 of the complaint is based on section 303 of the Labor Management Relations Act, 29 U. S. C. A., Sec. 187, which, shortly stated, prohibits secondary boycotts. The count alleges the occurrence of a secondary boycott by the defendants with consequent substantial damage to the plaintiff's business."

which the defendants there also moved to dismiss (p. 495):

> "* * * The defendants separately have filed motions to dismiss the complaint on many separate grounds. They will be considered separately and briefly at this time."

All motions were denied. The fact that this district court decision was affirmed (*supra,* p. 37), in an opinion written by Circuit Judge Parker, carries weight.

**4. SAID DECISION IN THE COLONIAL HARDWOOD CASE, UPHOLDING FEDERAL COURT JURISDICTION WITHOUT DIVERSITY OF CITIZENSHIP, IS SUPPORTED BY THE ONLY SOUND CONSTRUCTION THAT CAN BE GIVEN THE LANGUAGE OF SECTION 303(b).**

"Whoever" includes plaintiffs and their class.

*New Standard Unabridged Dictionary:*

> "**Whoever,** Any one, without exception; any person who; no matter who; as, high or low, whoever violates this law shall be punished."

"Whoever shall be injured in his business or property" includes plaintiffs, and their class, whose work in their said employment was business, and whose rights to their work tasks under said collectively bargained contracts is property.

*Nissen v. International Brotherhood of Teamsters, etc., et al.*, 229 Iowa 1028, 295 N. W. 858, 141 A. L. R. 598, at page 614:

> "* * * their rights under this contract with their employer were valuable property rights of which they were wrongfully deprived by the acts of the defendants. Such rights are guaranteed by the Fifth Amendment of the Federal Constitution. Cameron v. International Alliance, etc., 118 N. J. Eq. 11, 176 A. 692, 696, 97 A. L. R. 594. 'There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.' "

*Schneider v. Duer, et al.*, 170 Md. 326, 184 Atl. 914, at 919:

> "The right to engage in useful and productive labor is common to all men, Dasch v. Jackson (Md.), 183 A. 534, 538, and in a constitutional sense is property of which one may not be deprived except by due process of law. * * *"

*Carroll, et al. v. Local No. 269, International Brotherhood of Electrical Workers, et al.*, 133 N. J. Eq. 144, 31 A. 2d 223, at 224:

> "It is not inappropriate, however, to remark that the right to earn a livelihood is a property right which is guaranteed in our country by the fifth and fourteenth amendments of the federal constitution, * * *."

*Bautista v. Jones*, 25 Cal. 2d 746, at 749:

> "The right to work, either in employment or independent business, is fundamental and, no doubt,

enjoys the protection of the personal liberty guarantee of the Fourteenth Amendment to the federal Constitution, as well as the more specific provisions of our state Constitution. * * *"

This is the settled rule in the federal courts.

*Roseland v. Phister Mfg. Co.,* 125 F. 2d 417 (139 A. L. R. 1013), at 419:

> *"The language of the statute* (Clayton Act, Sec. 4; 15 U. S. C. 15) * * * *includes any person who shall be injured in his business or property.* * * * In a somewhat more truly economic, legal and industrial sense, it includes that which occupies the time, attention, and labor of men for the purpose of livelihood or profit, — persistent human efforts which have for their end pecuniary reward. It denotes 'the employment or occupation in which a person is engaged to procure a living.' Allen v. Commonwealth, 188 Mass. 59, 74 N. E. 287, 288, 69 L. R. A. 599." (Italics ours.)

The language of Section 303(b) is manifestly taken from the language in the Clayton Act, so that the same rule necessarily applies. (*Infra.*)

"Whoever shall be injured * * * may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy" places no restriction upon plaintiffs' jurisdiction in this case for two reasons:

(a) Because plaintiffs, and their class, have jurisdiction in the federal court under Section 301 (*supra,* pp. 31, 36, 38); and

(b) Because the language of Section 303(b) is taken from Section 4 of the Clayton Act, 15 U. S. C. 15, as above stated, and as is shown by said section, as follows:

> "*Any person who shall be injured in his business or property* by reason of anything forbidden in the antitrust laws *may sue therefor in any district court of the United States* in the district in which the defendant resides or is found or has an agent, *without respect to the amount in controversy,* and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee." (Italics ours.)

The District Court, therefore, has jurisdiction under Section 303(b) of this Act (29 U. S. C. A. 187(b)) like it has under Section 4 of the Clayton Act (15 U. S. C. A. 15). Furthermore, both jurisdictions are covered by 28 U. S. Code 1337.

**5. THERE IS NO QUESTION OF PLAINTIFFS' RIGHT TO SUE, AS INDIVIDUALS, UNDER SECTION 303.**

*In re Parks-Belk Company of Elizabethtown* (Elizabethtown, Tenn.) and *Retail Clerks International Association* (AFL). Case No. 10-RC-25, April 30, 1948 (77 NLRB No. 71), 22 LRRM 1036:

> "At the hearing the Employer filed a 'Motion to Dismiss Petition' alleging as the ground for dismissal that the Petitioner was engaged in boycotting the Employer in violation of Section 303 of the Act, as amended. This motion was referred to the Board. * * * To the extent that the alleged boycott is, as the Employer contends, a violation of Section 303 of the Labor Management Relations Act, 1947, the remedy provided in that section for individuals injured by violations thereof is a suit for damages in the federal courts. Accordingly, we shall deny the Employer's motion."

## POINT V.

### The United States District Court Also Has Jurisdiction of the First Count Under Judicial Code Section 24(1), 28 U. S. C. A. 41 (1), 28 U. S. Code 1331, Because the Conspiring Defendants Violated, and Continue to Violate, Every Provision of Section 7, and Related Sections, of the Wagner Act as Re-enacted in the Taft-Hartley Act.

The memorandum opinion of the District Court states a conclusion to the contrary [R. p. 136], as follows:

> "The deprivation of the right to bargain collectively is an unfair labor practice (29 U. S. C. 158(a) (1); Sec. 8 Wagner Act; *id.* Taft-Hartley Act). The exclusive power to prevent unfair labor practices is given to the Board (29 U. S. C. 160,(a)); Section 10 Wagner Act; *id.* Taft-Hartley Act), and right of review lies not in this Court, but in United States Court of Appeals, (*id.* subdivision (22)). See Amalgamated Workers v. Edison, 309 U. S. 261; Amazon Mill Co. v. Textile Workers Union, 167 Fed. (2) 183, C. C. A.; United, etc. v. International, etc., 115 Fed. (2) 488. This leads to the conclusion that the plaintiffs have in fact by said additional allegations, removed any doubt as to the lack of jurisdiction of this court as to the first asserted cause of action, unless plaintiffs right to sue in this court exists under either Section 301 or 303(b) of the Taft-Hartley Act."

28 *U. S. Code* 1331:

> "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States."

**The jurisdictional amount** or value in controversy is alleged [R. p. 8] as follows:

> "I. That the matter in controversy herein, being the right to bargain collectively under Sec. 7 of the National Labor Relations Act as re-enacted in Sec. 7 of the Labor-Management Relations Act of 1947 and the right to work for wages, and the right to wages, and damages for the deprivation of said right to collectively bargain, which exceeds the value of Three Thousand Dollars ($3,000.00), exclusive of interest and costs, as to each of plaintiffs, and each of the class in whose behalf they sue."

**The equitable character** of the action is alleged as [R. p. 25] follows:

> "XXXIX. That the exact amount of the damages due the plaintiffs, and the members of said class as aforesaid, is not known to them; that the records which would disclose the same are now, and at all times have been, in the exclusive possession and control of the defendants, or some of them; and that accordingly the amount thereof cannot be ascertained except by an accounting to be had pursuant to the order of this Court."

The prayer, among other things, is for an accounting and damages [R. p. 35].

**The test of jurisdiction** under this section is stated in *Gully v. First National Bank,* 299 U. S. 109 (57 S. C. 96, 81 L. Ed. 70), at 112, as follows:

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or im-

munity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. (Citing cases.) *The right* or immunity *must be such that it will be supported if the* Constitution or *laws* of the United States *are given one construction or effect, and defeated if they receive another.*" (Italics ours.)

## 1. DEFENDANTS VIOLATED EVERY PROVISION OF SECTION 7.

Sec. 7 (29 *U. S. C.* 157):

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

The conspiring defendants violated said section in every possible way, by interfering with the right of plaintiffs and said class: (a) To self-organization; (b) To maintain their self-organization in their own Brotherhood of Carpenters and Local 946; (c) To bargain collectively; (d) To bargain collectively through their own said Brotherhood and Local as the recognized representatives of their own choosing; and (e) To engage in concerted activities, in their own Brotherhood and Local, for the purpose of collective bargaining, and also for the purpose of maintaining their mutual aid and protection, through their own said Brotherhood and Local, among other things, from the very aggressions, conspiracy and frauds in the continuing mass lockout and replacement complained of in this case.

Said violations of Section 7, by defendants, were fraudulently conceived, intended and carried out, to divorce plaintiffs, and their class, from their own union, and to subordinate them to the IATSE, not alone to gratify the illegal IATSE demands, but also to benefit the co-conspiring defendant companies, and Association, by stripping plaintiffs, and their class, of their contractual six hour day, with time and a half for overtime [*supra,* pp. 8, 28], and by substituting an eight hour day therefore [*supra,* pp. 16, 18].

## 2. THE USE OF THE FICTITIOUS IMPASSE, BY THE CONSPIRING DEFENDANTS, WAS IN VIOLATION OF SECTION 7.

The pretense of an impasse is shown in the Exhibit "D-2" minutes of defendant Producers Labor Committee, as quoted in the statement of the case [*supra,* p. 12].

The refusal to bargain is shown in the Exhibit "D-7" minutes as quoted in the statement of the case [*supra,* pp. 16-17].

The wilful purpose of the defendant, in refusing to bargain, is shown by the Exhibit "D-8" minutes as quoted in the statement of the case [*supra,* p. 17].

These minutes show that the lawyers advised them that they were committing an unfair labor practice, as follows:

> "Lawyers said we can't refuse to bargain and told of consequences. Carpenters situation may or may not have been an unfair labor practice, * * *" [*supra,* p. 17].

These minutes further show that defendants proceeded with the unfair labor practices, in contempt for the laws of the country, upon the chance that the Labor Board might not assess any back pay, as follows:

> "Benjamin expressed belief that even though N. L. R. B. might decide Producers had engaged in unfair labor practice there was a good chance the Board might not assess any back pay" [*supra,* p. 18].

*National Labor Relations Board v. Crompton-Highland Mills, Inc.,* 93 L. Ed. Adv. 918 condemns the use of pretended impasses as the means of violating Section 7, at 919, as follows:

> "In this case a collective bargaining representative was certified, under the National Labor Relations Act, to represent all employees working in a certain appropriate bargaining unit. Their employer engaged in extended negotiations with this representative as to many matters, including rates of pay. December 19, 1945, the negotiations reached an impasse. The question here presented is whether this employer engaged in an unfair labor practice when, on January 1, 1946, it put into effect as of December 31, 1945, without prior consultation with the bargaining representative, a general increase in the rates of pay applicable to most of the employees who had been represented in the negotiations. This increase was a substantially greater one than any which the employer had offered during the negotiations. For the reasons to be stated, we hold that, under the circumstances, this action constituted an unfair labor practice and that a decree should be entered enforcing an order prohibiting such conduct."

3. THE USE OF THE MASS LOCKOUT OF ALL CARPENTERS, UPON SAID FALSE PRETENSE, AND THE REPLACEMENT OF ALL CARPENTERS WITH THE IATSE, BY THE CONSPIRING DEFENDANTS, WAS IN VIOLATION OF SECTION 7: (a) IN SAID REFUSAL TO BARGAIN WITH THE CARPENTERS, IN VIOLATION OF CONTRACTS; AND (b) IN SAID ATTEMPT TO SUBSTITUTE BARGAINING AGENTS, AND BAR PLAINTIFFS, AND THEIR CLASS FROM THEIR VOTING RIGHT TO CHOOSE AND MAINTAIN THEIR OWN BARBAINING AGENT.

*NLRB v. Andrew Jergens Co.,* 175 F. 2d Adv. 130, at 133:

> "* * * the company then refused to bargain with the Cosmetic Workers on the ground that they no longer represented a majority of the employees. * * * Thereafter, the Cosmetic Workers Union, apparently discredited in its attempt to achieve effective recognition, affiliated with the Teamsters on July 1, 1945.
>
> "(1, 2) * * * respondent, in refusing to bargain with Teamsters with reference to union security, committed an unfair practice under Sec. 8(5) of the Act. * * * It held that the certification of the Cosmetic Workers' (recognition in this case) * * * stands until such certification has been rescinded by the National Labor Relations Board or the courts."

And at 134:

> "(3) * * * the Board found respondent lacking in good faith in its negotiations with Teamsters and therefore guilty of an unfair practice under Sec. 8(5) of the National Labor Relations Act. This finding is supported by substantial evidence."

"(5) * * * Respondent cannot take advantage of the Board's delay in order to relieve itself of making amends for its unfair practices."

And at 135:

"(8) * * * In the Karp Metal case, 51 N. L. R. B. 621, the Board, in a similar situation, stated that it was its firm policy to assume that any losses of membership which are concurrent with or subsequent to unremedied unfair labor practices are results of such practices. * * * We are of the opinion that such policy is well within the scope of Sec. 10(c) of the Act, which permits the Board to take such affirmative action as will effectuate the policies of the Act.

"(9) While its employees were still on strike, respondent, without consulting the Teamsters, granted a general wage increase effective July 1, 1946. The Board found this action constituted an independent refusal to bargain within the meaning of Sec. 8(5) of the Act, and included appropriate remedial provisions in its 'cease and desist' order."

4. **THE FACT THAT THE CONSPIRING DEFENDANTS WERE GUILTY OF SAID FLAGRANT UNFAIR LABOR PRACTICES DOES NOT DEPRIVE PLAINTIFFS, AND THEIR CLASS, OF THEIR CIVIL RIGHT OF ACTION FOR THE DAMAGE SUFFERED.**

*Steele v. Louisville & N. R. Co.,* 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, upholds a civil right of action at page 207:

"The right is analogous to the statutory right of employees to require the employer to bargain with the statutory representative of a craft, a right which this Court has enforced and protected by its injunc-

tion in Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, *supra* (281 U. S. 556, 557, 560, 74 L. Ed. 1039, 1041, 50 S. Ct. 427), and in Virginian R. Co. v. System Federation R. E. D., *supra* (300 U. S. 548, 81 L. Ed. 799, 57 S. Ct. 592), and like it is one for which there is no available administrative remedy.

"We conclude that the duty which the statute imposes on a union representative of a craft to represent the interests of all its members stands on no different footing and that the statute contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty."

## POINT VI.

**The United States District Court Has Jurisdiction of the Third Count, Embodying and Supplementing the Allegations of the First Count, Under Judicial Code Section 24(8), 28 U. S. Code 1337, Because Said Action Arises From the Violation and Continued Violation, of the Wagner, Taft-Hartley, Social Security and Civil Rights Acts.**

The memorandum opinion of the District Court states a conclusion to the contrary [R. p. 136]:

"The deprivation of the right to bargain collectively is an unfair labor practice * * *. The exclusive power to prevent unfair labor practices is given to the Board * * *, and right of review lies not in this Court, but in the United States Court of Appeals * * * This leads to the conclusion that the plaintiffs have in fact by said additional allegations, removed any doubt as to the lack of jurisdiction of this court as to the first asserted cause of action, unless plaintiffs right to sue in this court exists under

either Sections 301 or 303(b) of the Taft-Hartley Act."

Section 1337:

"The district court shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

Paragraph II to XXXVIII, and XXXIX and XL of the first count were adopted in the third count [R. pp. 30, 32].

It was alleged that the defendant companies are engaged in interstate commerce (Par. IX; *supra,* p. 4).

REFUSAL TO BARGAIN.

It was further alleged in the third count, among other things [R. pp. 31, 32], as follows:

"IV. That said right to collectively bargain, as provided in and granted by said act, created and vested in the plaintiffs, and said class of persons, a new and additional civil right not theretofore enjoyed or possessed by citizens of the United States in general, or by the plaintiffs, and said class of persons, in particular, and vested in them the civil right in the premises pursuant to Section 1980 of the Revised Statutes of the United States (Title 8, United States Code, Section 47), and guaranteed by Amendments V and XIV of the Constitution of the United States."

"V. That, nevertheless, the defendants not respecting said civil rights of the plaintiffs, and said class of persons, have by their aforesaid acts and doings, nullified and rendered ineffectual their said right of collective bargaining, and have thus deprived

them of such right in the premises, and thereupon established, and have caused other parties to establish, a boycott, and have thereby deprived them of their right to be employed and work in said motion picture industry."

"VIII. That although the plaintiffs, and said class of persons, have at all times herein mentioned been ready, able and willing to bargain with the defendants for the purpose of ending said boycott, and restoring their aforesaid civil rights, and have sought so to do, said defendants have refused to so bargain with them."

## 1. PLAINTIFFS WERE ARBITRARILY DEPRIVED OF THEIR REMEDY BEFORE THE NLRB.

The allegations upon this point are set forth in Appendix "C" hereto attached.

*In the Matter of Association of Motion Picture Producers, Inc.* (*supra,* p. 42), the NLRB found certain of the defendants in this case guilty of unfair labor practices against the machinists, at page 467, as follows:

"1. We agree with, and adopt, the finding of the Trial Examiner that the Association is an employer within the meaning of the Act."

"3. We agree with the Trial Examiner's conclusion that certain of the Respondents discriminated against the employees listed in Appendix A of the Intermediate Report; and we adopt his finding that by such discrimination the Respondent producers Universal Pictures Company, Inc., Loew's Incorporated, RKO Radio Pictures, Inc., and Warner Bros. Pictures, Inc., and the Respondent Association violated Section 8(3) of the Act. * * *"

The NLRB never had an opportunity to consider the charges of unfair labor practices, because the action of

the General Counsel, in supporting the IATSE member Trial Examiner, and in refusing to file complaints, was final.

*Lincourt v. NLRB,* 170 F. 2d 306, 307:

> "As the Act now reads, the General Counsel of the Board 'shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10.' Such administrative determinations by the General Counsel are not denominated 'orders' in the Act, and the Act makes no provision for their review."

The only recourse of plaintiffs, and their class, is to treat the negative action of the NLRB Enforcement Officers as void, and look to the courts for redress.

*N. L. R. B. v. Phelps,* 136 F. 2d 562, at 564:

> "He caused the chief trial examiner to order the hearing reopened for the purpose of making Atlas Oil & Refining Corporation a respondent in the proceeding and to continue Denham as trial examiner. Though no charge has been made against Atlas and the filing of a charge must precede a complaint, Denham of his own motion issued an order to show cause why Atlas should not be made a party, and the complaint amended so as to charge it with offenses under the act. The proceedings having gone forward over the objctions of the trustee and Atlas, and their motions to disqualify him, the examiner exhibited resentment and spleen toward them and gave expression to his pre-determined opinion of their guilt on the charges he was supposed to be trying."

and at 566:

> "Whatever ought to be said of the examiner's persistent and partisan efforts to conduct the proceedings to a decision favorable to the Board, if the

examiner had been really in the position he assumed that he was in of an agent for the Board to sustain its charges, it cannot be successfully denied that his general attitude was not impartial but partial, not disinterested but partisan."

and at 564:

"Once partiality appears, and particularly when, though challenged, it is unrelieved against, it taints and vitiates all of the proceedings, and no judgment based upon them may stand."

**2. NOR CAN THE CONSPIRING DEFENDANTS TAKE ADVANTAGE OF THEIR OWN WRONGS IN CAUSING OFFICIALS OF THE CALIFORNIA UNEMPLOYMENT COMMISSION TO DENY MEMBERS OF PLAINTIFFS' CLASS FULL, FAIR, OPEN AND IMPARTIAL HEARINGS UPON THEIR RESPECTIVE CLAIMS FOR UNEMPLOYMENT AND DISABILITY BENEFITS.**

It has been shown, in the statement of the case [*supra*, p. 15] that the conspiring defendant motion picture companies, and Association, in pursuance of their conspiracy with the other defendants, after agreeing to lay off, lockout and replace every carpenter with an IATSE, fraudulently agreed, a week in advance of the layoff, lockout and replacement, to falsely represent to the State Unemployment Authorities that each carpenter "employee left his work on account of a trade dispute," and upon that agreement "to ask the Department to disqualify him for unemployment compensation."

The action of the State Unemployment Authorities, caused by the conspiring defendants, in denying plaintiffs, and their class, full, fair, open and impartial hearings on

their respective claims for unemployment and disability benefits, and in denying said claims without lawful hearings thereon, was void.

*Ohio Bell Telephone Company v. Public Utilities of Ohio,* 301 U. S. 292 (67 S. C. 724, 81 L. Ed. 1093) at 304:

> "Regulatory commissions have been invested with broad powers within the spere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. (Citing cases.) Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' (Citing cases) of a fair and open hearing be maintained in its integrity (citing cases). The right to such a hearing is one of 'the rudiments of fair play' (citing cases) assured to every litigant by the Fourteenth Amendment as a minimal requirement (citing cases). There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

Nevertheless, the conspiring defendants, by causing this miscarriage of administrative law and procedure in the State Department of Employment, have placed the locked out carpenters under more onerous conditions of employment, and under an added burden in protecting and enforcing their rights against the conspiring defendants.

3. THE DISTRICT COURT HAS JURISDICTION UNDER SECTION 24(8) OF THE JUDICIAL CODE, 24 U. S. C. SEC. 41(8), 28 U. S. CODE 1337.

*American Federation of Labor v. Watson,* 327 U. S. 582 (66 S. C. 761, 90 L. Ed. 873), at 591:

"* * * We do not pass on the question whether the District Court had jurisdiction under Sec. 24(1) or Sec. 24(14) of the Judicial Code, for it is the view of a majority of the Court that jurisdiction is found in Sec. 24(8) of the Judicial Code, 28 U. S. C. A. Sec. 41(8), 7 F. C. A. title 28, Sec. (8) which grants the federal district courts jurisdiction of all 'suits and proceedings arising under any law regulating commerce.' As we have said, the bill alleges a conflict between the Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining representatives of employees under that Act, are granted as a matter of federal law the right to use the closed-shop agreement or, alternatively, that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop. Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.'"

## POINT VII.

### The United States District Court Also Has Jurisdiction of the Third Count Under Judicial Code Section 24(12) (14), 28 U. S. C. A. 41(12) (14), as Revised in 28 U. S. Code 1343, and Fifth and Fourteenth Amendments to the Constitution.

Judicial Code 24(12) (14), 28 U. S. C. A. 41(12) (14) have been revised and embodied in 28 U. S. Code 1343, giving jurisdiction under the Civil Rights Act, R. S. 1979 and 1980.

Plaintiffs' allegations relative thereto have been given in Appendix "C" attached hereto.

*Bomar v. Keyes,* 162 F. 2d 136, at 138:

> "The plaintiff appeals from a judgment summarily dismissing her complaint in an action under the Civil Rights Act to recover damages for 'deprivation' of a privilege 'secured' by one of the 'laws' of the United States. * * *"

And at 139:

> "(5) We start with the assumption that it was Keyes' complaint which caused the Board of Education to discharge the plaintiff, and that the ground of the discharge was her service upon a federal jury. If so, both Keyes and the Board united to cause pecuniary loss to the plaintiff by an act which the statute had made a legal wrong: Keyes, by instigating the Board, the Board by acting upon her instigation. * * * That wrong is independent of any breach of contract, and would be the same, if Keyes had induced the Board not to employ the plaintiff; indeed, we assume that her discharge by the Board was not a breach of contract at all. Nevertheless, it may have been the termination of an expectancy of continued employment, and that is an injury to an interest which

the law will protect against invasion by acts themselves unlawful, such as the denial of a federal privilege."

Certiorari was denied November 17, 1947, 92 L. Ed. 400.

The jurisdiction under the Fifth and Fourteenth Amendments is submitted as apparent from the facts pled.

## POINT VIII.

### The United States District Court Has Jurisdiction of the Fourth Count Because the Agreement, Combination and Conspiracy of the Defendants Was in Restraint of Interstate Trade and Commerce, and Forbidden by the Sherman and Clayton Acts.

The memorandum opinion of the District Court states a conclusion to the contrary [R. p. 143], as follows:

> "I likewise adhere to the conclusion announced at the same time that the fourth cause of action brought under the Antitrust Laws, 15 U. S. C. 15, does not state a claim for relief * * *."

A copy of plaintiffs' fourth count [R. p. 33], and amendment thereto [R. p. 134], is hereto attached as Appendix "D."

Reference is made to the statement of jurisdiction (*supra,* pp. 3, 6), the statement of the case (*supra,* pp. 7-18), the summary (*supra,* pp. 24-30), and the adoption of the allegations in paragraphs II to XL, inclusive, of the first count as a part of the fourth count. [R. pp. 33-35.]

It is submitted that said amendment, designated paragraph X, contains a comprehensive statement of a cause

of action under the Sherman and Clayton Acts [R. p. 134], as follows:

> "X. That the conspiracies, and each of them, hereinbefore alleged in the paragraphs adopted from the First Cause of Action, and in this Cause of Acion, have been in restraint of trade, and commerce, among the several states, and with foreign nations, within the meaning of the Sherman Act (15 U. S. C. A. 1); and that plaintiffs, and the members of the class for whom they sue, have been injured in their business and property by reason thereof, within the meaning of the Clayton Act (15 U. S. C. A. 15) to their damage as hereinbefore alleged."

Jurisdiction is given by Section 4 of the Clayton Act (15 U. S. C. 15):

> "15. Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee."

The agreements, combination and conspiracy entered into, carried out, and ever since continued, by defendants injured plaintiffs, and their class, in their business and property, and were forbidden by Section 1 of the Sherman Act (15 U. S. C. 1):

> "1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * * Every person who shall make any contract or engage

in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

And by Section 2 thereof (15 U. S. C. 2):

"2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

1. **PLAINTIFFS AND THEIR CLASS WERE PERSONS INJURED IN THEIR BUSINESS AND PROPERTY, IN THE CONTEMPLATION OF SAID SECTION 4 OF THE CLAYTON ACT (15 U. S. C. 15).**

Reference is made to *Yazoo & M. V. R. Co. v. Webb* (*supra,* p. 32); *Nissen v. International Brotherhood of Teamsters, etc.; Schneider v. Duer, et al.; Carroll, et al. v. Local No. 269, etc.* (*supra,* p. 53); *Bautista v. Jones* and *Roseland v. Phister Mfg. Co.* (*supra,* p. 54), *showing that the rights of plaintiffs, and said class, in and under said collectively bargained contracts, including their right to work as employees, and to their right to bargain for the extension or modification of said collectively bargained contracts, under the terms of said Exhibit "B-9" "Interim Agreement"* (*supra,* p. 28), *are business and property.*

Reference is made to the statement of the case (*supra,* pp. 7-18), and summary (*supra,* pp. 24-30), showing that

plaintiffs, and said class, were injured in their said business and property.

*Roseland v. Phister Mfg. Co.* (*supra,* p. 54), is directly in point in the following statements at page 418:

> "Defendants are the only persons manufacturing and selling such equipment in the United States. Their sales are extensive and profitable. On or about March 29, 1930 the three companies combined their activities for the purpose of suppressing competition in interstate commerce in such products, conspired to monopolize the commerce therein, securing and retaining a monopoly, * * *."

just as the defendant companies, and Association, are a monopoly engaged in interstate commerce.

*Loew's, Incorporated v. Basson* (*supra.*).

And at page 419:

> "Section 4 of the Act, Title 15, Sec. 15, U. S. C. A., provides that *any person* who shall be injured in his business or property, as a result of violation of the Act, may recover damages. Defendants moved to dismiss the complaint on the ground that it stated no cause of action for the reason that plaintiff, if he had any business, within the intent of the Act, was not within those to whom damages are granted. *The question, then, is whether plaintiff is such a person as may recover damages, whether he has a business which has been damaged."* (Italics ours.)
>
> "(1) *The language of the statute is general and all inclusive. It includes any person who shall be injured in his business or property.* We assume that the word business was used in its ordinary sense and with its usual connotations. It signifies ordinarily that which habitually busies, or engages, time, attention or labor, as a principal serious concern or inter-

est. In a somewhat more truly economic, legal and industrial sense, *it includes that which occupies the time, attention and labor of men* for the purpose of livelihood or profit,—persistent human efforts which have for their end pecuniary award. *It denotes 'the employment or occupation in which a person is engaged to procure a living.'* Allen v. Commonwealth, 188 Mass. 59, 74 N. E. 287, 288, 69 L. R. A. 599." (Italics ours.)

*all of which is applicable to plaintiffs and their class.*

2. **DEFENDANTS, INCLUDING THE IATSE DEFENDANTS, IN THEIR SAID AGREEMENT, COMBINATION, CONSPIRACY, AND ACTION IN SAID MASS LOCKOUT AND REPLACEMENT, AND INJURY TO PLAINTIFFS' PROPERTY, ACTED, AND CONTINUE TO ACT, IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT (15 U. S. C. 1).**

Reference is made to:

(1) The abortive conspiracy of April, 1945 (*supra,* p. 9); the fraud practiced by the IATSE in causing the ambiguous and void AFL award (*supra,* p. 10); the AFL Committee Exhibit "C-4" clarification correcting the ambiguity in the award, and conforminig it to the intent of the Committee to follow contracts existing between the carpenters and the IATSE (*supra,* p. 10); the IATSE threat to "have all work stopped in the studios, exchanges and theatres" of the defendant companies if they respected the AFL award, as so clarified and intended (*supra,* p. 11);

(2) The agreement, combination and conspiracy that followed between the defendants: to pretend an impasse between the Companies and the carpenters (*supra,* p.

12); "to create an incident," as a trick and device against all carpenters, to lay off all carpenters in a mass lockout, and replace them with the IATSE, in violation of the existing collectively bargained agreements (*supra,* pp. 15-18, 24-30); to fraudulently block carpenters applications for unemployment and disability benefits during said lockout (*supra,* pp. 15, 67); to fraudulently block carpenters' charges of unfair labor practices (*supra,* pp. 59); and in connection therewith to refuse to bargain with the carpenters (*supra,* p. 8); *all of which was done, in pursuance of the conspiracy, for the purpose of depriving plaintiffs, and their class, of their property rights in and under their said collectively bargained contracts;* and

(3) The continuance of said mass lockout and replacement, interferences and refusal to bargain ever since, in deprivation of plaintiffs', and said class', said property rights in and under said collectively bargained contracts.

*Allen Bradley Co. v. Local Union No. 3* (*supra*), at page 798:

> "The question presented is whether it is a violation of the Sherman Antitrust Act for labor unions and their members, prompted by a desire to get and hold jobs for themselves at good wages and under high working standards to combine with employers and with manufacturers of goods to restrain competition in, and to monopolize the marketing of, such goods."

and at 800:

> "Agencies were set up composed of representatives of all three groups to boycott recalcitrant local contractors and manufacturers and to bar from the area equipment manufactured outside its boundaries."

*just as these defendants coerced the Independents* (*supra,* p. 16).

> "* * * All of this took place, as the Circuit Court of Appeals declared, 'through the stifling of competition,' and because the three groups, in combination as 'co-partners,' achieved 'a complete monopoly which they used to boycott the equipment manufactured by the plaintiffs.' Interstate sale of various types of electrical equipment has, by this powerful combination, been wholly suppressed."

which was likewise a boycott of the employees of said outside manufacturers, just as plaintiff and their class have boycotted here.

> "Quite obviously, this combination of business men has violated both Secs. (1) and (2) of the Sherman Act, unless its conduct is immunized by the participation of the union."

and at 807:

> "For the union's contribution to the trade boycott was accomplished through threats that unless their employers bought their goods from local manufacturers the union laborers would terminate the 'relation of employment' with them and cease to perform 'work or labor' for them; and through their 'recommending, advising, or persuading others by peaceful and lawful means' not to 'patronize' sellers of the boycotted electrical equipment." (Italics ours.)

just as the conspiracy with the employer defendants here was accomplished through the threats of the IATSE. (*supra,* p. 11.)

> "* * * We pass to the question of whether unions can with impunity aid and abet business men who are violating the Act."

and at 810:

> "Finding no purpose of Congress to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act, we hold that the district court correctly concluded that the respondents had violated the Act.
>
> "Our holding means that the same labor union activities may or may not be in violation of the Sherman Act, dependent upon whether the union acts alone or in combination with business groups."

## POINT IX.

### This Is a Class Action Under Rule 23(a) in Which Plaintiffs Are Entitled to Sue for Themselves and Their Class.

1. The rights and wrongs pled are common to all members of the class, composed of the members of the United Brotherhood of Carpenters & Joiners of America, Local 946, employed, or eligible to be employed from their pool, by the defendant Motion Picture Companies, under the collectively bargained contracts, and all of whom were locked out of their employment, and right of employment, by the conspiring defendants.

2. The object of the action is the adjudication of claims which do or may affect specific property involved in the action, to-wit, the full amount to be determined by the accounting prayed, due plaintiffs and said class from the defendant Motion Picture Companies, and Association, jointly and severally, to compensate them for the wages they would have received in their employment under good faith observance of said collectively bargained contracts, both as to those who were employed in work tasks on September 23, 1946, the date of the mass lockout, and as to those who were in the pool subject and entitled to call as needed.

3. The questions of law or fact affecting the several rights and the relief sought are common to all members of the class.

4. The plaintiffs and their class also have a common interest, involved in the outcome of this action:

(a) In the maintenance of Local No. 946, as their bargaining agent, and as the local labor union of their choice; and

(b) In maintaining their freedom from the unlawful aggressions of the defendant IATSE, and the other conspiring defendants.

*Supreme Tribe of Ben Hur v. Cauble,* 255 U. S. 356 (41 S. C. 338, 65 L. Ed. 673), at 367:

> "If the Federal courts are to have the jurisdiction in class suits to which they are obviously entitled, the decree, when rendered, must bind all of the class properly represented. The parties and the subject-matter are within the court's jurisdiction. It is impossible to name all of the class as parties, where, as here, its membership is too numerous to bring into court."

*Railway Express Agency v. Jones,* 106 F. 2d 341, at 343:

> "(1-3) While defendant's contention that a class suit may not be maintained where each claimant of the class asserts a separate claim based on individual and separate fraudulent representations, is sound, we are bound, at this stage of the proceedings, by the allegations of the complaint. It is possible, accepting the allegations of the complaint, that there exists a case of joint action upon identical fraud with the resulting total damage exceeding $3,000. It is only after proof has been received on this issue, or admissions made in open court by plaintiff, that the court may, in view of the pleadings, deny plaintiff's right to sue for all; that is, to maintain a class suit."

## Conclusion.

As shown by the *Yazoo* case (*supra,* pp. 32-33), appellants' collectively bargained contracts should have been "kept faithfully and without subterfuge."

As shown by the *Crompton-Highland* and *Jergens* cases (*supra,* p. 60), the contracts were violated, ruthlessly violated (*supra,* pp. 29-30).

In their violation the conspiring defendants caused miscarriages of administrative law and procedure in the two largest and most important social agencies of government (*supra,* pp. 65, 67).

By their continuing violation of said contracts and wrongs, defendants have all rendered themselves liable under Sections 301 and 303 of the Taft-Hartley Act (*supra,* pp. 36, 38, 39).

This case is of vast importance in the public interest.

By their conduct the conspiring defendants have raised grave constitutional questions.

## Prayer.

Appellants respectfully pray that the Court:

1. Reverse the judgment of dismissal made by the District Court, upon each of the four counts;

2. Consider and determine the propriety of consolidating the first and third causes of action, so that the several grounds of jurisdiction therein presented may be stated in one count;

3. Consider and determine the propriety of consolidating this action and the actions in Appeals Nos. 12345 and 12346, to minimize the burden upon the courts; and

4. For such other action and guidance as the Court deems proper, to facilitate the trial and disposition of the cases.

Respectfully submitted,

ZACH LAMAR COBB,

*Attorney for Appellants.*

## APPENDIX A.

### MEMORANDUM OPINION.

The plaintiffs, individuals, are members of Carpenters Union Local 946, suing herein for damages. They sue as a class, as did some of the same individuals in case No. 6063 of this Court, decided by Judge Harrison on February 25th, 1947, Schatte v. I. A. T. S. E., 70 Fed. Supp. 1008; affirmed percuriam without opinion January 16, 1948, 165 Fed. 2nd 216; certiorari denied 334 U. S. 812, May 3, 1948. The Union is not a party to either action.

The plaintiffs being members of the same class as in case No. 6063, are bound by the doctrine of res judicata under the decision in No. 6063-BH, as to all matters adjudicated therein which are likewise involved in this case. Gregg v. Winchester, 173 Fed. (2), 512. Even if that were not so, the reasoned force of Judge Harrison's opinion would compel concurrence therein.

In case 6063-BH, the thing involved was alleged to be the "right to work for wages"; here it is alleged to be not only that "right" but also, the "right to bargain collectively under Section 7 of the National Labor Relations Act as re-enacted in Section 7 of the Labor-Management Relations Act of 1947," as the complaint now reads after amendment by consent on the day of the argument. The value of such rights is asserted to be worth in excess of the jurisdictional amount of Three Thousand Dollars, as to each plaintiff.

Insofar as any claim for relief could be ferreted out of the 69 page printed complaint, under the Civil Rights Act, the National Labor Relations Act, and the 5th and 14th Amendments of the Constitution, which might arise from their "right to work," nothing more need be [118] said than to refer to Judge Harrison's opinion.

It is first necessary to determine whether or not the additional allegations above mentioned confer jurisdiction not existing under the "right to work" allegations disposed of by Judge Harrison's opinion. I cannot see that they do. The deprivation of the right to bargain collectively is an unfair labor practice (29 U. S. C. 158 (a) (1); Sec. 8 Wagner Act; id. Taft-Hartley Act). The exclusive power to prevent unfair labor practices is given to the Board (29 U. S. C. 160, (a)); Section 10 Wagner Act; id. Taft-Hartley Act), and right of review lies not in this Court, but in United States Court of Appeals, (id. subdivision (2)). See Amalgamated Workers v. Edison, 309 U. S. 261; Amazon Mill Co. v. Textile Workers Union, 167 Fed. (2), 183 C. C. A.; United, etc. v. International, etc., 115 Fed. (2) 488. This leads to the conclusion that the plaintiffs have in fact by said additional allegations, removed any doubt as to the lack of jurisdiction of this court as to the first asserted cause of action, unless plaintiffs right to sue in this court exists under either Section 301 or 303 (b) of the Taft-Hartley Act.

Section 303 (b), in its first clause is a broad grant of jurisdiction to any District Court for determination of injuries to anyone . . . organization or individual, . . . regardless of amount, for injury to his or its business or property which may result from acts committed in violation of Section 303 (a). That grant of jurisdiction is however limited by the condition expressly contained in subdivision (b) that it is "subject to the limitations and provisions of Section 301 hereof."

Whatever else may be said (and a great deal [119] has been said in scores of pages of briefs and more than three full days of argument), any right of recovery under

Section 301 must rest upon a contract and its asserted violation. The whole Act relates to labor contracts, hence it must be a contract contemplated by the Act, i. e., a collective bargaining contract or contract relating to fair or unfair labor practices. If this were not otherwise clear it is made so by the language of Sec. 301, as it refers to "contracts between an employer and a labor organization representing employees * * * or between any such labor organizations." And the plaintiffs have set up or attempted to set up contracts between various labor organizations and employers. The question for decision then is whether or not jurisdiction of "suits for violation" of such contracts are limited to the employer and labor organizations, only, as parties, or may be brought in this court by individual members of a labor organization which is a party to a contract with an employer or with another labor organization.

The paucity of precedent permits recourse only to the language of the Statute and the legislative history, in the decision of that question. Without reciting the legislative history, I think it is plain from it that Congress did not intend to grant jurisdiction to the District Court, without regard to amount or diversity of citizenship, of every suit in which an individual member of any union might wish to assert a violation of a labor contract, whether the contract be between an employer and a labor organization, or between labor organizations. To have done so would be to have placed upon the District Court a staggering burden of litigation without the incidental provisions for [120] additional Judges, other personnel, and the court rooms to try them. The legislative history indicates to me beyond dispute that the intention of Congress by Section 301 was to provide a forum, other than the street, for

settlement of asserted violations of labor contracts by law suits, the parties to which could only be the parties to the contract involved, i. e., either the employer or the labor organization: And that it was intended that the labor organization alone could speak as a party to the suit on behalf of the employees it represented as a party to the contract. This conclusion is further borne out by the language of subdivision (c) of Sec. 301, which reads:

> "(c) For the purpose of actions and proceedings by or against labor organizations in the District Court of the United States, District Courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members." (Underscoring supplied.)

The provisions of subdivision (b) of 301 relating to suits by or against labor organizations and the effect of judgments in such suits, while couched in permissive language instead of mandatory, did no more than to eliminate the confusion which existed concerning the right of a union to sue and be sued, and the like, because of the various state laws under which a union might have been organized, and particularly to eliminate the fear that an individual member might be personally liable for the wrongs committed by his union in asserted violation of a contract. Without such permissive language, it could have been argued that 301 (a) did not give a labor organization a right to sue or be sued, except under the law of the State of its existence, or [121] where it was doing busi-

ness. And the same would be true as to the effect of judgments, service of process, venue, acts of agents, and things covered by the remainder of Section 303. United, etc., vs. Wilson, etc., 80 Fed. Supp. 563, 568.

The plaintiffs contend that in any event they are appropriately parties plaintiff under Rule 23, Federal Rules of Civil Procedure, relating to class suits. Whether they do, or could, qualify under that rule is not necessary to determine as the provisions of Sec. 301 are inconsistent with Rule 23, Federal Rules of Civil Procedure, and must therefore prevail. Sec. 301 is a special and limited grant of jurisdiction which must be strictly construed. This is especially so in the light of the history of legislation dealing with labor relations and disputes such as the Clayton Act (15 U. S. C. 17), the Norris-La Guardia Act, (29 U. S. C. 101, et seq.,) the Wagner Act (29 U. S. C. 151), and the Act under consideration.

I conclude, therefore, that Section 301 does not give the plaintiffs as individual members of a union the right to sue in asserted violation of the contracts involved, whether their union was or was not a direct party to such contracts.

Coming now to the question as to whether or not Sec. 303 (b), without reference to Sec. 301, grants jurisdiction to the District Court of a right of action under Sec. 303 (a), if any exists, in the plaintiffs as against the defendant I. A. T. S. E., and the individuals who are labor organization officials. Without determining whether or not the plaintiffs could be proper party plaintiffs in any action against I. A. T. S. E. in this [122] or any other court, i. e. if they could state a cause of action for violation of Sec. 303 (a), it seems clear to me that this court was not granted jurisdiction. It is noted in Section 301 (a)

that the grant of jurisdiction therein contained was "without respect to the amount in controversy, or without regard to the citizenship of the parties." And that the grant of jurisdiction in 303 (b) is only "without respect to the amount in controversy" and that nothing is said with regard to the citizenship of the parties. In an act as controversial as the Taft-Hartley Act, it can hardly be supposed that such an omission of a jurisdictional grant was an oversight, and that rules of statutory construction can be strained to the point of reading it into Sec. 303 (b). This is particularly so in light of the history of so-called "labor" legislation, to which allusion was previously made.

Furthermore, it is logical that Congress in giving limited jurisdiction to the District Courts in suits between the unions themselves and employers by Sec. 301, should have let the bars of jurisdiction down as to both amount and diversity of citizenship because the number of suits that can get into the District Courts thereunder is limited to the formal parties to contracts. But the right of action granted in Sec. 303 (b) is much broader than the right of action under 301. Under Section 303 "Whoever shall be injured in his business or property may sue, if such injury is the result of any act committed in violation of Sec. 303 (a) without regard to the existence or non-eixstence of any contract. Conceivably any person, whether a party to a labor contract or not, might be [123] injured by the acts proscribed in Sec. 303 (a).

The parties to suits under 301 are limited to actual parties to contracts, but the persons who might be injured by the practices proscribed by 306 (b) would not be so limited. It is thus logical that Congress should have re-

quired the diversity of citizenship set forth in Section 1332 of Title 28, U. S. C. as an additional jurisdictional prerequisite for actions under Sec. 303 (b).

The "limitations and provisions" of Sec. 301 which are adopted by reference in Sec. 303 (b) have reference to the "limitations and provisions" which are not in conflict with the specific language of Sec. 303. Thus the provisions of subdivision (b), (c), (d) and (e) of Sec. 301 relating to acts of agents of unions, suits of a union as an entity, non-enforcibility of judgments against the property of individual members, jurisdiction in districts where the union has its principal office or where its agents are engaged in the business of the union, and service of legal process, would appear to apply to suits brought under Secs. 303 (b). But the lack of diversity under Section 303 (b) cannot be supplied by such reference to "limitations and provisions" of Sec. 301, in view of the omission of any such provision concerning diversity in Sec. 303 (b).

No such diversity being alleged as to said defendants, this court does not have jurisdiction of any cause of action which the plaintiffs have attempted to assert against the defendant I. A. T. S. E. and said individuals.

The defendant employers take the position that Sec. 303 (b) does not confer any jurisdiction on this [124] court for the reason that Sec. 303 confers jurisdiction only for actions against "labor organizations." It is not necessary to decide that question here. It would seem to me to be improper to do so, for the reason that employers and labor organizations might conceivably be liable for concert of action between them, and that question should be decided by a court which would have jurisdiction to try and decide such a case.

This court lacks jurisdiction of the defendant employers for another reason. Under Section 1332 of the new Title 28 U. S. C. the court has jurisdiction only of actions between citizens of different states or of foreign states. I do not think the language of Sec. 1332 of Title 28 needs any clarification. But if there is any doubt that it means that the diversity must exist as to all parties, either plaintiff or defendant, then that doubt is eliminated by reference to the removal statutes. It is illogical that this court has no greater jurisdiction of a case originally filed in this court, than a case which is attempted to be removed to this court. The language of the previous judicial code limiting removal to controversies which are "wholly between citizens of different states" (Sec. 71 of former Title 28 U. S. C.) has been changed and made even stronger by the provisions of Sec. 1441 (b) of the new Title 28 U. S. C. which provides that an action, "shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought" (underscoring supplied). It does not appear from the complaint that none of the parties defendant is a citizen of California. Hence there is no jurisdiction [125] in this court under Sec. 303 of any cause of action attempted to be stated against the defendant employers.

What has heretofore been said applies with equal force to the so-called second cause of action.

I indicated from the bench during argument (Tr. 251) that the third cause of action should be dismissed for the

reason that the facts atempted to be set out in it did not show any asserted denial of civil rights by any State Government, or under any color of the law of any State, and that no claim for relief was stated under the Social Security Act, or the California unemployment Act. (See cases cited in Judge Harrison's Opinion, supra, on that point). I adhere to that conclusion, but add that this court lacks jurisdiction of the third cause of action for lack of diversity.

I likewise adhere to the conclusion announced at the same time that the fourth cause of action brought under the Antitrust Laws, 15 U. S. C. 15, does not state a claim for relief for the reason that the allegations of possible injury to the plaintiffs, to the effect that the acts of defendant will increase the cost of making motion pictures, which increase will in turn cause an increase in the price of admission to motion-picture theaters to be paid by the plaintiffs, if, as, and when they may want to attend a theater, are so nebulous, remote, speculative and conjectural as to form no basis for a claim for relief.

The motions to dismiss are granted. In view of the fact that the complaint has now been amended three times, and that the decision in case No. 6063-BH, supra is now final, the dismissal will be without leave to amend.

Los Angeles, California, May 27th, 1949.

[Endorsed]: Filed May 27, 1949. Edmund L. Smith, Clerk. [126]

## APPENDIX B.

### JUDGMENT OF DISMISSAL.

The motions of certain defendants to dismiss the Second Amended and Supplemental Complaint, as amended by an amendment to Second Amended and Supplemental Complaint dated December 3, 1948, and each and every claim for relief stated therein, upon the grounds that the Court lacks jurisdiction over the subject matter of said complaint and each cause of action thereof and that said complaint and each cause of action thereof fails to state a claim upon which relief can be granted, having heretofore been submitted to this Court for determination and this Court having granted said motions without leave to amend.

Now, Therefore, It Is Ordered, Adjudged and Decreed that [127] the above-entitled action be and the same is hereby dismissed without leave to amend.

Dated: July 1st, 1949.

PEIRSON M. HALL
Judge

Approved as to form, as provided in Rule 7(a) of the Rules of the United States District Court for the Southern District of California. Bodkin, Breslin & Luddy, by Michael G. Luddy, Attorneys for Certain Defendants. O'Melveny & Myers, by Homer I. Mitchell, Attorneys for Certain Defendants.

Plaintiffs object to the foregoing form of order, and to the contents thereof, in so far as they go beyond the Court's memorandum opinion dismissing the action for want of jurisdiction.

Dated: July 1, 1949.

ZACH LAMAR COBB
Attorney for Plaintiffs

Judgment entered Jul. 1, 1949. Docketed Jul. 1, 1949. Book, 59, page 300. Edmund L. Smith, Clerk, by C. A. Simmons, Deputy.

[Endorsed]: Filed Jul. 1, 1949. Edmund L. Smith, Clerk; by C. A. Simmons, Deputy Clerk. [128]

## APPENDIX C.

ALLEGATIONS RE EXHAUSTION NLRB REMEDY.

[R. pp. 31-32.]

"VI. That by the same means defendants have induced certain public officials of the United States, viz., in the NLRB, to deny plaintiffs, and said class of persons, their right to a fair and impartial hearing on charges of unfair labor practices on the part of defendants, heretofore made against defendants by certain members of said class, and to deny action thereon, in violation of the National Labor Relations Act, as amended, and of the Labor-Management Relations Act, 1947, and of said Civil Rights Act, Section 1979 (8 U. S. Code 43)." [R. p. 31.]

"VII. That by the same means defendants induced certain public officials of the State of California, viz., in the California Employment Commission, to deny certain of plaintiffs, and of said class of persons, a full, fair, open and impartial hearing upon their respective claims for unemployment and disability benefits to which they are entitled, and of which they are being deprived, in violation of the Social Security Act, Section 303 (42 U. S. Code, 503), and of the California Unemployment Insurance Act, as amended, Section 70, and of the Regulations thereunder, Article 31, Sections 310 and 315, and in violation of the said Civil Rights Act, Section 1980, of the Revised Statutes of the United States (Title 8, U. S. Code, Section 47)." [R. p. 32.]

It was intended that paragraphs VII to IX, inclusive, of the second count [R. pp. 27-30] be adopted and embodied in this third count, as follows:

"VII. That to such end, on October 23, 1947, individual members of said class, who were respectively employees of said employer defendants filed charges

of unfair labor practices, against said employer defendants, and also against said defendant IATSE, with the National Labor Relations Board, hereinafter called NLRB, and said charges were referred to a Field Examiner in the Los Angeles, California, regional office of said NLRB for investigation and report. That in the course of his investigation, said Field Examiner called upon said complaining members of said class to appear before him, and to cause others to appear, and make sworn statements of said charges. That said complaining carpenters thereupon, by counsel, requested said Field Examiner, and said Los Angeles Regional Office of the NLRB, to permit their counsel to be present at said examination, to protect their rights, and at the same time to aid the Examiner in obtaining full statements of fact. That this request was denied by the Field Examiner, by the Regional Director of the Los Angeles Office, and by the General Counsel, of the NLRB.

"VIII. That on or about May 10, 1948, subsequent to the hearings conducted by said Field Examiner, on the charges of each of the complaining members of said class, and before his investigation had been completed, and his report made, knowledge came to said complaining parties that said Field Examiner at the time of said hearings, and immediately, and for a long time prior thereto, had been continuously a member of said defendant labor union IATSE. That said complaining members of said class thereupon immediately, on May 10, 1948, gave said Field Examiner notice, in writing, that they had heard he was a member of the IATSE, and called upon him for the facts. That thereafter, on May 13, 1948, the Regional Director of the Los Angeles Regional Office of the NLRB advised said complaining members of said class, that it was a fact that said Field Examiner was, and had been a member of the IATSE, as aforesaid, and that

the officers of the NLRB had for a long time had knowledge thereof.

"IX. That thereupon said complaining members of the class, by their counsel, on May 14, 1948, notified the Chairman of the NLRB, in writing, of said disqualification of the Field [25] Examiner, and of the NLRB officials responsible for assigning said charges to him for investigation and report, and that by reason of the foregoing the complaining members of said class had not, and could not, have a fair and impartial hearing of their aforesaid charges, and further requested the removal from such investigation of said Field Examiner, and those of his superiors who, with the aforesaid knowledge of his said disqualification, had nevertheless assigned said hearing to him. That nevertheless said NLRB, and its General Counsel, refused to remove said Field Examiner, or his said superior, or any of them, and permitted said Field Examiner to complete his investigation, make his report, and thereupon act thereon, in dismissing the charges against said IATSE, and in refusing to proceed upon the charges against said employer defendants, to the detriment and damage of said complaining members of said class.

"X. That by the aforesaid unlawful acts and doings said defendants have caused the plaintiffs, and said class of persons, to be deprived of their lawful work tasks from said day, and down to the present time, and as a direct consequence thereof have caused the plaintiffs, and said class of persons, to generally lose and be deprived of large sums of money they would have otherwise earned in their work tasks as aforesaid, and have caused them to lose and be deprived of their respective unemployment benefits under the laws of the United States and of the State of California."

## APPENDIX "D."

FOURTH COUNT OF COMPLAINT.

"I.

That the jurisdiction in this action arises under Title 28, U. S. C. A., Section 1343, and under the Sherman and Clayton Acts (15 U. S. C. A., Section 15).

II.

That plaintiffs here adopt paragraphs II to XXXVIII, inclusive, of the first cause of action, the same as though pled herein in full.

III.

That the defendants have, by their aforesaid unlawful acts and doings, established and since continuously boycotted, and have caused other producers, called independent producers, of motion pictures, whose productions are also sold, transported, released and exhibited in interstate commerce, to also boycoot certain plaintiffs, and members of said class of persons theretofore employed, or eligible to be employed, by such independent motion picture producers, and employ in their place and stead members or permittees of said IATSE.

IV.

That a large part of the members or permittees of said IATSE, which said independent motion picture producers were so compelled to employ, were and are less competent [28] workmen than the plaintiffs, and said class of persons, so that said independent motion picture producers were required to and did employ a great many more persons in the performance of carpenter work in their respective studios than they otherwise would have been re-

quired to do, and have unlawfully caused the members of said IATSE accordingly to profit thereby.

V.

That plaintiffs are informed and believe, and therefore allege that by such means, and as a direct consequence thereof, said employer defendants, in cooperation with the defendant IATSE, have, as they intended, materially increased said independent picture producers' cost of production, and reduced their profits accordingly.

VI.

That said employer defendants are well able to absorb and bear such increases in cost of production and consequent loss of profits, but as plaintiffs are informed and believe, and therefore allege, many of said independent producers are not.

VII.

That plaintiffs are informed, believe, and therefore allege, that when said employer defendants have, or shall hereafter have, eliminated the competition of said independent motion picture producers, or a substantial number thereof, they intend to and will pass on the amounts of their said increased costs and attendant loss of profits by increasing the price of their products in amounts agreed upon, which must ultimately be borne by the several theater owners who shall exhibit the same, and the public, including plaintiffs, and said class, who patronize said theaters.

VIII.

That said unlawful acts and doings of the defendants have, and will, result in an unlawful restraint of trade and monopoly in violation of said Sherman Act.

IX.

That plaintiffs here adopt paragraphs XXXIX and XL of the first cause of action, the same as though pled herein in full.

AMENDMENT TO FOURTH COUNT.

X.

That the conspiracies, and each of them, hereinbefore alleged in the paragraphs adopted from the First Cause of Action, and in this Cause of Action, have been in restraint of trade, and commerce, among the several states, and with foreign nations, within the meaning of the Sherman Act (15 U. S. C. A. 1); and that plaintiffs, and the members of the class for whom they sue, have been injured in their business and property by reason thereof, within the meaning of the Clayton Act (15 U. S. C. A. 15) to their damage as hereinbefore alleged [115].